FURTHER AMENDING THE REORGANIZATION ACT OF 1949

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 4623

A BILL TO FURTHER AMEND THE REORGANIZATION ACT OF 1949

MARCH 3, 1965

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FURTHER AMENDING THE REORGANIZATION ACT OF 1949

(H.R. 4623)

WEDNESDAY, MARCH 3, 1965

HOUSE OF REPRESENTATIVES,
EXECUTIVE AND LEGISLATIVE
REORGANIZATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1501–B, Longworth House Office Building, Hon. William L. Dawson (chairman) presiding.

Present: Representatives William L. Dawson, Chet Holifield, Henry S. Reuss, Benjamin S. Rosenthal, Clarence J. Brown, and John N. Erlenborn.

Also present: Elmer W. Henderson, subcommittee counsel; Louis I. Freed, investigator; James A. Lanigan, general counsel, Committee on Government Operations; J. P. Carlson, minority counsel; and Raymond T. Collins, minority professional staff, Committee on Government Operations.

Chairman DAWSON. This meeting of the Subcommittee on Executive and Legislative Reorganization has been called to consider H.R. 4623, a bill introduced by me at the request of the President. It will amend the Reorganization Act of 1949 by repealing the time limitation on the authority given the President to submit reorganization plans to the Congress under the Reorganization Act of 1949. Heretofore, this authority has been extended for intervals of 2 years, with one exception of 4 years. This legislation, therefore, has the effect of making permanent the President's authority under the act which would expire on June 1, 1965.

As members of this subcommittee well know, the President may submit reorganization plans to the Congress which will go into effect after 60 days unless either the House or the Senate vetoes the plan by a simple majority vote. We have been advised that the President contemplates reorganization of the various departments and agencies to produce economies and efficiency in the Government.

In his message of February 3, 1965, to the Congress, submitting the draft bill, President Johnson said:

> With only a few lapses since 1932, authority generally similar to that conferred by the present Reorganization Act has been available to the Presidents then in office. The usefulness of the authority to transmit reorganization plans to the Congress and the continuing need for such authority to carry out fully the purposes of the Reorganization Act have been clearly demonstrated. The

time has now come, therefore, to eliminate any expiration date with respect to that authority; the authority should be made commensurate with the responsibility of the President under the same statute.

H.R. 4623 and the text of Public Law 109 of the 81st Congress, as amended, follows:

[H.R. 4623, 89th Cong., 1st sess.]

A BILL Further amending the Reorganization Act of 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended ,is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

[Public Law 109—81st Congress]

[Chapter 226—1st Session]

[H.R. 2361]

AN ACT To provide for the reorganization of Government agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I

SHORT TITLE

Section 1. This Act may be cited as the "Reorganization Act of 1949".

NEED FOR REORGANIZATIONS

Sec. 2. (a) The President shall examine and from time to time reexamine the organization of all agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(1) to promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding under the provisions of this Act, and can be accomplished more speedily thereby than by the enactment of specific legislation.

REORGANIZATION PLANS

Sec. 3. Whenever the President, after investigation, finds that—

(1) the transfer of the whole or any part of any agency, or of the whole or any part of the functions thereof, to the jurisdiction and control of any other agency: or

(2) the abolition of all or any part of the functions of any agency; or

(3) the consolidation or coordination of the whole or any part of any agency, or of the whole or any part of the functions thereof, with the whole or any part of any other agency or the functions thereof; or

(4) the consolidation or coordination of any part of any agency or the functions thereof with any other part of the same agency or the functions thereof; or

(5) the authorization of any officer to delegate any of his functions; or

(6) the abolition of the whole or any part of any agency which agency or part does not have, or upon the taking effect of the reorganization plan will not have any functions.

is necessary to accomplish one or more of the purposes of section 2(a) he shall prepare a reorganization plan for the making of the reorganizations as to which he has made findings and which he includes in the plan, and transmit such plan (bearing an identifying number) to the Congress, together with a declaration that, with respect to each reorganization included in the plan, he has found that such reorganization is necessary to accomplish one or more of the purposes of section 2(a). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session. The President, in his message transmitting a reorganization plan, shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of such function, and shall specify the reduction of expenditures (itemized so far as practicable) which it is probable will be brought about by the taking effect of the reorganizations included in the plan.

OTHER CONTENTS OF PLANS

SEC. 4. Any reorganization plan transmitted by the President under section 3—

(1) shall change, in such cases as he deems necessary, the name of any agency affected by a reorganization, and the title of its head; and shall designate the name of any agency resulting from a reorganization and the title of its head;

(2) may include provisions for the appointment and compensation of the head and one or more other officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan such provisions are necessary. The head so provided for may be an individual or may be a commission or board with two or more members. In the case of any such appointment the term of office shall not be fixed at more than four years, the compensation shall not be at a rate in excess of that found by the President to prevail in respect of comparable officers in the executive branch, and, if the appointment is not under the classified civil service, it shall be by the President, by and with the advice and consent of the Senate, except that, in the case of any officer of the municipal government of the District of Columbia, it may be by the Board of Commissioners or other body or officer of such government designated in the plan;

(3) shall make provision for the transfer or other disposition of the records, property, and personnel affected by any reorganization;

(4) shall make provision for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with any function or agency affected by a reorganization, as he deems necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have such functions after the reorganization plan is effective, but such unexpended balances so transferred shall be used only for the purposes for which such appropriation was originally made;

(5) shall make provision for terminating the affairs of any agency abolished.

LIMITATIONS ON POWERS WITH RESPECT TO REORGANIZATION

SEC. 5. (a) No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of—

(1) abolishing or transferring an executive department or all the functions thereof or consolidating any two or more executive departments or all the functions thereof; or

(2) continuing any agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reoganization had not been made; or

(3) continuing any function beyond the period authorized by law for its exercise, or beyond the time when it would have terminated if the reorganization had not been made; or

(4) authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is transmitted to the Congress; or

(5) increasing the term of any office beyond that provided by law for such office; or

(6) transferring to or consolidating with any other agency the municipal government of the District of Columbia or all those functions thereof which are subject to this Act, or abolishing said government or all said functions.

(b) No provision contained in a reorganization plan shall take effect unless the plan is transmitted to the Congress before [June 1, 1963.] *June 1, 1965.*

TAKING EFFECT OF REORGANIZATION

SEC. 6. (a) Except as may be otherwise provided pursuant to subsection (c) of this section, the provisions of the reorganization plan shall take effect upon the expiration of the first period of sixty calendar days, of continuous session of the Congress, following the date on which the plan is transmitted to it; but only if, between the date of transmittal and the expiration of such sixty-day period there has not been passed by either of the two Houses a resolution stating in substance that the House does not favor the reorganization plan.

(b) For the purposes of subsection (a)—

(1) continuity of session shall be considered as broken only by an adjournment of the Congress sine die; but

(2) in the computation of the sixty-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain.

(c) Any provision of the plan may, under provisions contained in the plan, be made operative at a time later than the date on which the plan shall otherwise take effect.

DEFINITION OF "AGENCY"

SEC. 7. When used in this Act, the term "agency" means any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government, and means also any and all parts of the municipal government of the District of Columbia except the courts thereof. Such term does not include the Comptroller General of the United States or the General Accounting Office, which are a part of the legislative branch of the Government.

MATTERS DEEMED TO BE REORGANIZATIONS

SEC. 8. For the purposes of this Act the term "reorganization" means any transfer, consolidation, coordination, authorization, or abolition, referred to in section 3.

SAVING PROVISIONS

SEC. 9. (a) (1) Any statute enacted, and any regulation or other action made, prescribed, issued, granted, or performed in respect of or by any agency or function affected by a reorganization under the provisions of this Act, before the effective date of such reorganization, shall, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, have the same effect as if such reorganization had not been made; but where any such statute, regulation, or other action has vested the function in the agency from which it is removed under the plan, such function shall, insofar as it is to be exercised after the plan becomes effective, be considered as vested in the agency under which the function is placed by the plan.

(2) As used in paragraph (1) of this subsection the term "regulation or other action" means any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(b) No suit, action, or other proceeding lawfully commenced by or against the head of any agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of the taking effect of any reorganization plan under the provisions of this Act, but

the court may, on motion or supplemental petition filed at any time within twelve months after such reorganization plan takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the successor of such head or officer under the reorganization effected by such plan or, if there be no such successor, against such agency or officer as the President shall designate.

UNEXPENDED APPROPRIATIONS

SEC. 10. The appropriations or portions of appropriations unexpended by reason of the operation of this Act shall not be used for any purpose, but shall be impounded and returned to the Treasury.

PRINTING OF REORGANIZATION PLANS

SEC. 11. Each reorganization plan which shall take effect shall be printed in the Statutes at Large in the same volume as the public laws, and shall be printed in the Federal Register.

TITLE II

SEC. 201. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in such House in the case of resolutions (as defined in section 202); and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

SEC. 202. As used in this title, the term "resolution" means only a resolution of either of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the ———— does not favor the reorganization plan numbered — transmitted to Congress by the President on ————————, 19—.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; and does not include a resolution which specifies more than one reorganization plan.

SEC. 203. A resolution with respect to a reorganization plan shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

SEC. 204. (a) If the committee to which has been referred a resolution with respect to a reorganization plan has not reported it before the expiration of ten calendar days after its introduction, it shall then (but not before) be in order to move either to discharge the committee from further consideration of such resolution, or to discharge the committee from further consideration of any other resolution with respect to such reorganization plan which has been referred to the committee.

(b) Such motion may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same reorganization plan), and debate thereon shall be limited to not to exceed one hour, to be equally divided between those favoring and those opposing the resolution. No amendment to such motion shall be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(c) If the motion to discharge is agreed to or disagreed to, such motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same reorganization plan.

SEC. 205. (a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. No amendment to such motion shall be in order and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(b) Debate on the resolution shall be limited to not to exceed ten hours, which shall be equally divided between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

SEC. 206. (a) All motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to a reorganization plan, and all motions to proceed to the consideration of other business, shall be decided without debate.

(b) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

Approved June 20, 1949.

Chairman DAWSON. We have with us today Mr. Harold Seidman, Assistant Director for Management and Organization of the Bureau of the Budget, who will furnish us with further information on the need for this legislation. Mr. Seidman.

STATEMENT OF HAROLD SEIDMAN, ASSISTANT DIRECTOR FOR MANAGEMENT AND ORGANIZATION, BUREAU OF THE BUDGET; ACCOMPANIED BY FRED E. LEVI, ASSISTANT CHIEF; HOWARD SCHNOOR, MANAGEMENT ANALYST; AND VICTOR ZAFRA, MANAGEMENT ANALYST, OFFICE OF MANAGEMENT AND ORGANIZATION

Mr. SEIDMAN. Mr. Chairman, it is always a pleasure to appear before this subcommittee. I have a prepared statement and with your permission, I will proceed.

Mr. Chairman and members of the subcommittee, I welcome this opportunity to appear before your subcommittee in support of H.R. 4623, a bill further amending the Reorganization Act of 1949.

As President Johnson stated in his recent budget message to the Congress:

> We have neither the resources nor the right to saddle our people with unproductive and inefficient Government organization services and practices * * *. We must reorganize and modernize the structure of the executive branch in order to focus responsibilities and increase efficiency.

The President has also emphasized that we must bring "the public service to the highest state of readiness."

To assist him in achieving this objective, the President has recommended that his authority to transmit reorganization plans under the Reorganization Act of 1949 be made commensurate with his responsibilities under the act. Under section 2(a) of the Reorganization Act of 1949, the President has a permanent duty to—

> examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary * * *.

However, his authority under the same act to transmit reorganization plans to effect changes in the Government's structure has, in the past, been limited to short periods of about 2 to 4 years. Under the present law, his authority will expire on June 1, 1965. Pursuant to the President's request, H.R. 4623 would amend the Reorganization Act of 1949 by repealing section 5(b) and thereby eliminating the expira-

tion date for the authority to transmit reoganization plans under the act.

As early as 1949, President Truman asked Congress for a permanent grant of authority to transmit reorganization plans. As President Truman indicated in a message to the Congress in 1949—

> The improving of the Government is a continuing and never ending process. Government is a dynamic institution. Its administrative structure cannot be static. As new programs are established and old programs change in character and scope to meet the needs of the Nation, the organization of the executive branch must be adjusted to its changing tasks.

Every subsequent President has asked Congress to extend the reorganization authority.

The First Hoover Commission on the Organization of the Executive Branch also recognized the need for permanent reorganization authority, stating that—

> the power of the President to prepare and transmit plans of reorganization to the Congress should not be restricted by limitations and exemptions.

Since 1949, scientific and technological progress have accelerated the pace of change. New problems have arisen and President Truman's observations are even more relevant now. The Government needs organizational flexibility to cope with problems which may require new organizational solutions, and reorganization authority will help to achieve those solutions. However, unless legislation such as H.R. 4623 is enacted, the President and the Congress, after the end of May of this year, will not be able to utilize the reorganization plan procedure which has proved its effectiveness in achieving timely improvements in the organization of the executive branch.

Over 30 years of experience with some sort of Presidential reorganization authority indicates that it is required on a continuing and permanent basis. The need for this authority will continue to be great. It is one of the essential means of insuring that the executive branch of the Government can be organized to discharge effectively and efficiently its responsibilities.

As President Johnson stated in his letter to the Speaker of the House of Representatives:

> The people expect and deserve a Government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.
>
> Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm, and effectiveness.
>
> The Congress itself recognizes these ideals, and has many times approved the ideas and hopes of this request.

The Reorganization Act authorizes a simplified procedure for improving the structure and management of the executive branch. Under this procedure, a reorganization plan providing for the reorganization of executive agencies and transmitted to the Congress by the President takes effect after 60 days of continuous session of Congress (as defined in the act) unless either House of Congress passes a resolution of disapproval during the 60-day period. This procedure enables the

President, as the responsible head of the executive branch, to initiate improvements in executive organization, and it reserves to the Congress effective powers of review and disapproval.

The Reorganization Act of 1949, as amended, contains two titles. Title I sets forth the responsibility of the President for preparing the reorganization plans, states certain requirements and limitations controlling the contents of the plans, and provides the procedure for their taking effect. Title II consists entirely of the special rules of the Congress governing the expeditious handling of reorganization plans by the Congress.

Section 2(a) of the act states the six purposes of the reorganization procedure:

(1) To promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;

(2) To reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;

(3) To increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) To group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) To eliminate overlapping and duplication of effort.

The desirability of these objectives is obvious.

Subsection (b) of section 2 states:

(b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding under the provisions of this Act, and can be accomplished more speedily thereby than by the enactment of specific legislation.

I emphasize that this is a finding of the Congress, as expressed in the act itself, that reorganization can be accomplished more speedily through the reorganization plan procedure than through the enactment of specific legislation.

Accordingly, section 2 not only sets forth the objectives to be sought by the Reorganization Act but points out that they can be accomplished, and accomplished more speedily under the reorganization plan procedure.

The Reorganization Act specifically authorizes the undertaking of five basic types of reorganizations by reorganization plan. Those are:

(1) Transfer,

(2) Consolidation,

(3) Coordination, or

(4) Abolition of the whole or any part of any agency or of the functions of any agency, and

(5) The authorization of any officer to delegate any of his functions.

"Agency" is defined to mean "any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government," and any and all parts of the Government of the District of Columbia except the courts.

The Reorganization Act has become a well-accepted and proven tool for helping to keep the executive branch well organized to meet its current needs and for attacking the problems of ineffectiveness, inefficiency, or uneconomical operations of Government. It affords a useful, expeditious, and successful procedure by which the President may present, and the Congress may review, proposals for the reorganization of agencies and activities of the executive branch of the Government.

The cooperative executive-legislative approach authorized in the Reorganization Act was adopted after long experience had demonstrated that improvements in organization were difficult to achieve when the sole way of correcting defects was to rely upon the passage of specific legislation.

Improvements were long delayed and often overdue when a reorganization contained in a bill had to pursue its course through the legislative machinery and compete for attention with urgent substantive legislation.

The Reorganization Act permits an alternative, or supplemental, way of approaching this problem, and it does so by clearly placing the responsibility for initiating improvements upon the President. In addition, it is an approach which provides ample safeguards for the rights of anyone who wishes to be heard for or against any particular proposed change.

The provisions of the present Reorganization Act have been developed over the past 33 years. The first statute was undoubtedly experimental. Successive and successful improvements have been made since then. Presidential initiation of organizational improvements subject to congressional review was authorized by the Economy Act of 1932.

Under that act, the President could provide for certain reorganizations of executive agencies by Executive orders which had to lie before the Congress for 60 days, subject to disapproval by a simple majority of either House of the Congress.

In the Economy Act of 1933, changes were made to strengthen the procedure. It provided that Presidential orders making reorganizations would automatically take effect after lying before the Congress for 60 days. The Congress could prevent such an order from taking effect only by enacting specific legislation.

The reorganization provisions of the Economy Act of 1933 remained in effect until March 19, 1935, during which time 8 principal and over 15 subsidiary orders took effect and none was disapproved.

This cooperative executive-legislative approach to reorganization was revived with the enactment of the Reorganization Act of 1939. That act authorized reorganization plans as we know them today.

Reorganization plans, prepared by the President, were transmitted to the Congress and became effective after 60 days unless disapproved by a concurrent resolution passed by both Houses of the Congress.

Five major reorganization plans were transmitted in 1939 and 1940 and all took effect.

During World War II, emergency powers were vested in the President to make wartime reorganizations by Executive order without congressional review. But after the war, the Congress enacted the Reorganization Act of 1945, closely patterned after, and continuing the procedure of, the Reorganization Act of 1939. During the almost 2½ years that the 1945 act was in effect, seven reorganization plans were transmitted to the Congress; four became effective, and three were disapproved.

The concurrent resolution procedure authorized by the 1939 and 1945 acts proved highly effective in those important prewar and postwar years. Those acts, however, contained a major defect; namely, they provided for the outright exemption of certain specified agencies and functions and the requirement for the special handling of others, thus preventing the application of the act equally to all parts of the executive branch.

Upon the recommendations of the President and the First Hoover Commission to make the reorganization plan procedure comprehensive in its scope, the Reorganization Act of 1949 contained no such exemptions or limitations. This was a major improvement in reorganization legislation. Coupled with that improvement was a change in the disapproval procedure.

The Reorganization Act of 1949 provided for congressional disapproval of a plan by the adoption of a resolution by a majority of the authorized membership of either House of the Congress. This was the so-called one-House, constitutional-majority disapproval arrangement. When the President's authority to transmit reorganization plans under the act was extended in 1957, this provision was deleted. Since that time a simple majority of either House has been able to disapprove a reorganization plan. In 1964, Congress provided that no reorganization under the act shall have the effect of—

> * * * creating any new executive department, or abolishing or transferring an executive department or all the functions thereof, or consolidating any two or more executive departments or all the functions thereof; * * *

The period during which reorganization plans could be transmitted to the Congress under the Reorganization Act of 1949 was originally scheduled to expire March 31, 1953, but it has been extended five times and, as I mentioned earlier, now expires on June 1, 1965.

Great strides have been made since the Reorganization Act of 1939 became law on June 20, 1949; 68 reorganization plans have been transmitted to the Congress, and 49 have become effective.

Taking the broadest view, since the first Reorganization Act of 1939 became law, virtually the entire structure of the executive branch has been reshaped by changes made under the cooperative Presidential-congressional approach embodied in the Reorganization Acts. Every agency in the Executive Office of the President has had its organization affected by actions under the Reorganization Acts.

Every executive department has benefited from organizational adjustments made by reorganization plans; likewise, the Civil Service Commission, the Housing and Home Finance Agency, and many of the other major independent agencies have been reorganized. Viewed

thus, the reorganization plan is a vital instrument for keeping our governmental house in order. One group, President Truman's Advisory Committee on Management, said in 1952:

> We therefore think there is good reason to regard the invention and acceptance of this tool for reorganization as the greatest single enabling step toward management improvement in the Federal Government in this generation (Report to the President, December 1952, p. 6).

The Reorganization Act of 1949 was enacted following the strong recommendation of the First Hoover Commission that the President be given authority to prepare and transmit plans of reorganization to the Congress. The Commission stated:

> This authority is necessary if the machinery of Government is to be made adaptable to the ever-changing requirements of administration, and if efficiency is to become a continuing rather than a sporadic concern of the Federal Government.

The very first recommendation of the Second Hoover Commission on December 31, 1954, was as follows:

> As a result of unanimous vote at its meeting held on November 15, 1954, the Commission recommends to the Congress that the authority of the President to file reorganization plans, which expires on April 1, 1955, be extended (p. 22, Progress Report).

Thus, each of the two Hoover Commissions has urged that the reorganization plan authority be continued as a means for attaining better Government organization.

Extensions of the reorganization authority have consistently been reported favorably by this committee. In its report on the 1961 extension, the committee's report stated:

> Under the rules of the House, this committee is given the responsibility of evaluating the effects of laws enacted to reorganize the executive branch of the Government and studying the operation of Government activities at all levels with a view to determining its economy and efficiency. With this responsibility always in mind the committee favorably reported the Reorganization Act of 1949 and recommended its successive extensions. It believes the act has proved a useful tool in the past and should be continued. With the modification made in 1957 requiring only a simple majority of either House to pass a disapproval resolution, the powers of neither executive nor legislative branches seem to to be greatly out of balance.

I might say with a further amendment of the last extension which prohibits the creation of executive departments under the reorganization plan procedure, it seems that almost all of the controversial elements in the reorganization plan procedure have now been eliminated.

The President, as Chief Executive, is responsible for the efficient management of the executive branch. As the tasks of Government become steadily more exacting, and as the range of Government's activities becomes more complex in response to the needs of our times, the importance of sound organization and management assumes critical proportions.

Economy, efficiency, and clear lines of Executive responsibility are central to the faithful execution of the laws. The authority to transmit plans under the Reorganization Act is an essential tool to aid the President in meeting his responsibilities.

Reorganization is a continuing necessity to insure optimum organizational arrangements for changing programs and circumstances. For

these reasons, I recommend that the Congress afford continuing Reorganization Act authority by enacting H.R. 4623 into law.

That completes my statement, Mr. Chairman.

Chairman DAWSON. Mr. Holifield?

Mr. HOLIFIELD. I have no questions.

Chairman DAWSON. Mr. Brown?

Mr. BROWN. I think you have made a very splendid, very fine report on the Reorganization Act and the effect of it. I don't think anyone questions the need for it, or the validity of it, or the work that has been accomplished under it.

It seems to me—and I am going to speak right to the point, because time seems to be of the essence around here—the whole question involved here is one that the Congress has been confronted with time after time, and that is whether or not this should be a permanent law or should be extended perhaps for 2 years again, as we have done in past. The accomplishments which you mentioned have been the result of the operation of the act under extensions, rather than under a permanent grant of power.

It seems to me that the Congress should always be just a bit zealous to keep within its own hands the right to take a look every so often at different acts, and not be put in a position where it might have to repeal an act; but, instead, if it is good, simply continue it. I am perfectly willing to go along on the basis of extending for another 2 years this Reorganization Act. I think, speaking for the minority party, that the minority will go along on it.

I think if it is a matter of trying to make it a permanent power, then you will run into difficulty on the floor, as you have in the past. We have had that problem on the floor in the past, and I don't think there is any reason why we should have it.

I think the easiest and the smartest thing to do is simply amend the act to extend it for 2 years and go on from there.

Mr. SEIDMAN. Mr. Brown, I appreciate the comments you have made. I recognize this has been an issue that has come up before. I don't think we have stressed as much in the past, though, that the Reorganization Act is permanent legislation, It is a permanent act.

Mr. BROWN. I understand that.

Mr. SEIDMAN. It imposes certain duties on the President, which he is required to carry out. But the provision which gives him the power to perform these duties is limited in time.

Mr. BROWN. That is right. He still has the power under the Reorganization Act, if he doesn't do anything on the permanent act, to make a study and report to Congress. Congress can then meet it in one of two ways, either by granting him authority to file a reorganization plan, or by introducing legislation.

Now, I think the method we have followed of letting the President present a reorganization plan is all right, if you do it within certain limitations, and if you don't make it a permanent power.

Mr. SEIDMAN. Yes. You have consistently supported reorganization authority through the years, Mr. Brown.

Mr. BROWN. My dear friend, I was the father of the Reorganization Act as recommended by the Hoover Commission. If there was any sire in connection with this, I was the sire. There was a time or two

when you wouldn't have had any Reorganization Act, if I hadn't taken the floor and made a pretty hard stand to get it; and there was a time or two we had to make some compromises, as you may remember, in order to get it, because there was considerable argument about some of these extensions.

But the Hoover Commissions recommended it, both the First Hoover Commission and the Second Hoover Commission.

I originated the idea of those Commissions, wrote the legislation, guided it through Congress, and served on both of them. You served on the Second Hoover Commission with me, Mr. Holifield, and we didn't approach our work from a partisan angle at all. I don't think there was any time we ever had any partisan differences on that Commission, and I don't want to see any partisan differences on this.

Mr. SEIDMAN. There certainly is not. I don't think anyone will regard it as a partisan measure.

Mr. BROWN. But I do think you will run into trouble if you want to make the authority permanent.

We have had that experience before in the past, the question of making it permanent. But if you have 2 years' extension, that is it, and we can say it is an agreed matter and there will be no problem about it.

Mr. SEIDMAN. I would like to point out some practical problems we have had with the 2-year limitation.

As you know, with the 2-year extensions we have had significant gaps, when this authority has not been available to the President. We are operating now under the act which has given us less than a full year under which to develop and submit plans to Congress, because of delays, and it wasn't on this side, because this committee has always acted very fast. But it is usually——

Mr. BROWN. I know of no reason why this measure can't be pushed right along.

Mr. SEIDMAN. We have had the problem that for considerable periods we have been without any reorganization authority.

The other part of the problem, although 2 years seems like a reasonable length of time, we find that really to make the necessary study, to develop a reorganization, which is sound, to do the kind of exploratory work with those who will be affected, to do as we do today, to come up and consult with the Members of Congress who would be concerned with reorganization plans, which we now do as a matter of established procedure——

Mr. BROWN. You do it all of the time anyhow, whether this act is on the books or not. That is the usual procedure.

Mr. SEIDMAN. But the only point is 2 years pass very rapidly.

Mr. BROWN. Whether the 2 years pass or not, you are continuously doing it anyhow, all of the time, and that is what you should do. You should keep current.

Mr. SEIDMAN. My only point is that under the 2-year period, it is really too short a time period in which to develop reorganization plans.

Mr. BROWN. You know we have a length of time a man has to be in service before he can be declared a veteran, and he says that is too short a time, or too long a time, or something else, but there has to be a cutoff some place.

Mr. SEIDMAN. The point I am making is that 2 years, and I have been working with reorganization plans now for 20 years, is an inadequate time period in which really to plan for a reorganization program.

Mr. BROWN. But you do the same thing anyhow.

Mr. SEIDMAN. Well, a lot of things are just held back because we don't have the authority. And as the act says, they are sent up in a bill and because they are reasonably technical or no one gets very concerned with it, they are passed over; the committees have more important things to deal with.

Reorganization is often unglamorous and it doesn't move as fast as some other things. I know of cases where, because the authority wasn't available, the action was just delayed.

Mr. HOLIFIELD. Will the gentleman yield on that point?

Mr. BROWN. Yes.

Mr. HOLIFIELD. I would ask the witness to explain. You say there have been gaps. Will you please explain what you mean by that?

Mr. SEIDMAN. There have been periods, Mr. Holifield, when the President has not had reorganization authority available to him, where his request for the extension of this authority has, for example——

Mr. HOLIFIELD. When was that? I can't remember that. I thought this committee always acted promptly.

Mr. SEIDMAN. Yes; this committee has, but it was in the Senate.

Mr. HENDERSON. In 1962 and most of 1963 we didn't have the authority.

Mr. SEIDMAN. From June 1963 to July 1964.

Mr. HENDERSON. Our committee acted, the House acted, but the Senate refused to act.

Mr. SEIDMAN. From June 1959 to April 1961, and June 1, 1957, to September 1957. That is just 3 months. But there have been two major gaps, one during the Eisenhower administration and one during the Kennedy administration, when there was no reorganization authority for a period of over a year.

Mr. HOLIFIELD. That was due to lack of action in the Senate, rather than in the House?

Mr. SEIDMAN. That is correct. In every instance, this committee and the House, I think, has responded to the President's request, whether it was President Eisenhower or President Kennedy.

Chairman DAWSON. Mr. Reuss?

Mr. REUSS. Mr. Chairman, this is an ironic situation. Our good friend, the gentleman from Ohio, Mr. Brown, has admitted paternity of the Reorganization Act and he should be proud of it.

Mr. BROWN. It wasn't an admission. It was a boast.

Mr. REUSS. He should be proud of it. And then the President comes along with sort of an aid for dependent children program, to relieve some of the strain on this child by having it go into the valley of the shadow of death every 2 years. But, to my surprise, the gentleman from Ohio indicates that he is going to oppose this program. Let me ask the witness this: What did Mr. Herbert Hoover have to say about this reorganization plan in his reports? Was he for it, and did he suggest that the plan be made dependent on congressional renewal every 2 years?

Mr. SEIDMAN. The Hoover Commission recommended—of which Mr. Hoover was the Chairman and Mr. Brown was a distinguished member, and Mr. Holifield of the second one——

Mr. REUSS. Also distinguished.

Mr. SEIDMAN. Yes; recommended that the authority be continuing and not subject to limitation.

Mr. REUSS. So the suggestion that it be stopped every 2 years while Congress legislates on the matter really goes backward from the late Mr. Hoover. Is that correct?

Mr. SEIDMAN. That is correct. The original Reorganization Act of 1949 was a 4-year act, not a 2-year act.

Mr. BROWN. Yes. I remember that Mr. McCormack took the floor at one time on this, and I remember Mr. Rayburn took the floor. Of course, there is a sort of a habit among Presidents that they like to have all of the power and there is some reluctance on behalf of the legislative branch to surrender all of this authority and jurisdiction to the executive branch.

They have the feeling that perhaps they would like to keep, just at least, the opportunity to look it over once in a while, to see how it works.

Mr. REUSS. Just one more question: If the Congress should pass the bill, H.R. 4623, proposed by the President and introduced by Mr. Dawson, there is nothing to stop the Congress, any time it changes its mind about the reorganization procedure, from repealing it and denying the President any power whatever to reorganize, is there?

Mr. BROWN. Except if the President wanted to veto the bill, the Congress would have to pass it over his veto. So you give the President the power? Is that right?

I am amazed a man as illustrious as you, as skilled as you are in parliamentary procedure, would not realize that could happen.

Mr. REUSS. I am gratified by the gentleman's amazement.

Mr. SEIDMAN. I think the first Reorganization Act of 1932 was a permanent act, repealed by the Congress.

Mr. BROWN. And it was so permanent some of us are trying to get rid of it yet.

Mr. REUSS. Did the President veto the repeal?

Mr. SEIDMAN. No. Mr. Levi tells me there was an amendment put in in 1933. I think there was a change of administration at that time.

Mr. REUSS. I have nothing more then to say, Mr. Chairman. My off-hand reaction is that I would want to keep up with Mr. Herbert Hoover and would not want to go backward from his suggestion.

Mr. BROWN. I know you have been a great supporter of Hoover all your life.

Chairman DAWSON. Do you have any questions, Mr. Erlenborn?

Mr. BROWN. It is wonderful to see you endorse him.

Mr. ERLENBORN. Yes, Mr. Chairman. This does amount, does it not, to a delegation of legislative power by Congress to the Executive?

Mr. SEIDMAN. I think it could be so construed.

Mr. HOLIFIELD. I object to that answer. I want the record to show I object to it. At the proper time, if the gentleman will yield, later, I will make my objections known.

Mr. Erlenborn. Besides being a delegation of legislative authority to the Executive, this act also contains in effect permanent rules, or if this bill were adopted, would be permanent rules of the House, rules of procedure that differ from the normal rules of the House?

Mr. Seidman. These are not permanent rules. I think you will find the act specifically said these rules can be changed, but they do not bind and extend from one Congress to another.

Mr. Erlenborn. I thought it was only the 2-year limitation that caused these to be reviewed every Congress.

Mr. Seidman. No.

Mr. Erlenborn. Title II, section 201(a), I think.

Mr. Seidman. It says—

> With the full recognition of the constitutional right of either House to change such rules, so far as relating to procedure in such House, at any time in the same manner and extent as in the case of any other rule.

So these are not legislated in a form not subject to change by the Congress.

Mr. Erlenborn. I think, however, since this does amount to the adoption of rules of the House, and it is our customary procedure to review the rules of the House, not to bind a succeeding Congress with rules we adopt in this Congress, I think the same procedure is valid here, to every 2 years have the new Congress adopt its own rules or review its rules.

Mr. Seidman. May I point out that that part of the act is permanent, not subject to review. We are only amending one provision of this act. This is permanent legislation, including the part relating to the rules of the House. The only provision which is not permanent is that which authorizes the President to transmit reorganization plans.

Mr. Erlenborn. Isn't that the section that is concerned with the rules? It is the procedure for filing of the objection or the resolution of objection within 60 days.

Mr. Seidman. It doesn't—it is rather academic, you might say, unless the President has the authority to transmit the plans. But that particular section is not amended under the proposed legislation. It remains in being and is really triggered into effect whenever the Congress renews the authority to transmit plans.

Mr. Erlenborn. You would admit those rules are useless if the act is not extended.

Mr. Seidman. Yes. But the point is they are not subject to review. For example, in your present consideration of this legislation, you are not considering that part of the Reorganization Act which relates to the rules.

Mr. Erlenborn. In my opinion, I think the salutary effect of the 2-year extension is that the whole act is reviewed every 2 years, as well as the rules.

Mr. Holifield. Mr. Chairman?

Chairman Dawson. Mr. Holifield?

Mr. Holifield. I made a rather abrupt statement and I didn't mean to be discourteous. I thought the effect of the question and the answer should have some comment. This does not delegate to the President the right to legislate. This only empowers the President to send up a draft of legislation with the provision that it be considered by the Congress and either rejected or accepted.

Therefore, the Congress still retains all of its power to legislate, to reject or to accept the draft of legislation which is sent up.

So I thought the answer of the witness was not sufficiently clear in this matter and I ask the witness if my point is not right, that this gives to the President the authority to send up a draft of legislation? The only difference, between sending up this draft of legislation and the sending up of a draft of legislation for the executive branch in regular procedure, is the mandatory provision in the Congress that Congress either reject it or accept it. Therefore, the Congress holds the ultimate power of legislation.

Mr. SEIDMAN. Certainly that is correct in terms of the effect. I might clarify my remarks, because when I answered Mr. Erlenborn, I said it could be so construed. I was not indicating by that that I was concurring in the remark, because the Attorney General, I think, in a letter to this committee some years ago, said that it was not a delegation of legislative authority, that the Reorganization Act was the legislation, and in effect the act provided for performance of functions which were contingent for their accomplishment on action taken by the Congress.

So they construed it not to be a delegation of legislative authority.

Mr. ERLENBORN. If the gentleman would yield for just a moment on that point, I don't think your statement is entirely correct that we have the same power to legislate here as we do with, say, a message from the President, or a draft of legislation that he would send to the Congress in that we are, in this instance, given the veto power. Actually, the legislative procedure has been reversed. The only power to draft the legislation in this procedure is given to the Executive and the only power Congress is given is the power to veto.

We do not have the power to amend, we don't have our usual legislative powers that we would have as to other legislation.

Mr. HOLIFIELD. Our power to veto is exercised by either passing the legislation or rejecting it.

Mr. ERLENBORN. But isn't this the reverse?

Mr. HOLIFIELD. Yes.

Mr. ERLENBORN. The legislative power is given to the Executive in this instance and the veto power to the Congress.

Mr. HOLIFIELD. I can't agree with the gentleman on that. The right to draft the legislation is already in the President's hands. The only thing we give to the President, actually, in this act, is we bind ourselves to consider the legislation. It is mandatory, in other words, in this instance, for us to consider the legislation or it becomes law. Therefore, it does not detract from the Congress for 60 days the right to reject. And as long as we have the right to reject, then I say that we have not delegated the authority to legislate.

If we had given the President the right to send up a plan which became effective without any action of the Congress or any consideration of the Congress, then I would admit we have given to him the right to legislate.

Mr. ERLENBORN. Well, in effect this is what we have given him. If the President files one of these reorganization plans and Congress does nothing, does not consider it, it takes full force and effect.

In other words, we have only the veto power.

Mr. Holifield. That assumes the Congress will not exercise its prerogative. If it does not exercise its prerogative, by default it gives away, at that point, the legislative power.

Mr. Erlenborn. That is my point.

Mr. Holifield. Whether it is permanent or 2 years or 4 years, as it has been in the past, it still does not take away from the Congress the right to exercise its prerogative of legislation.

Mr. Erlenborn. We can't amend.

Mr. Seidman. I think it should be pointed out that any one Member of Congress, if he objects, can introduce a resolution of disapproval, then action by the Congress is required.

Mr. Holifield. That is right. That insures consideration and it insures there will not be a default in the process, because in a body of 435 members, you are always going to find at least one person who is antagonistic to something the President suggests.

Mr. Brown. Do you remember what a battle there was to get that right?

Mr. Holifield. I don't remember, being honest in my answer, I don't remember a battle. I remember very well that there was debate, of course, as there has been debate on the number of votes required, the constitutional majority and so forth.

I think we have weakened the original act, which required the constitutional majority, which gave the President an advantage in getting his legislative draft passed.

It now is on the level of any other bill in the House, that does not require constitutional majority. It requires a simple majority to either kill it or pass it. Therefore, it assumes more the regular legislative attributes than it did when it required the constitutional majority.

Going to the basic merit of it, I don't think there is any argument today on the basic merit of the President, as head of the executive branch, submitting methods or plans by which he thinks the executive branch can be improved in its economy and efficiency of operation, with the consent of the Congress.

Therefore, I think that the question as to whether it should be 2 years or permanent is the only question that is before the committee at this time.

I am sure this committee would be diligent, as the parent of the legislation, in watching the way the President acts under any kind of a reorganization plan, whether it is a 2-year, 4-year, or a permanent plan and that we do not, under the Reorganization Act of 1946, in any way delete our power to scrutinize that legislation which the committee passes.

In fact, we are advised under the Reorganization Act of 1946, to follow each piece of legislation, to see how it functions with the full right to recall it and amend it or even abolish it at any time. It seems to me that the bill is a reasonable bill and, therefore, I will support the bill.

Mr. Brown. I think that is the only question, as I said in the beginning, the question of whether you want to extend it for 2 years or make it permanent. I can support the bill and I think the minority can support it, and there will be no opposition to the measure that I know

of if it is a 2-year extension. If it is permanent, there will be opposition to the measure, and that is a matter not within my purview.

Chairman DAWSON. Mr. Rosenthal, do you have any questions?

Mr. ROSENTHAL. Just a few short comments, Mr. Chairman. I think Mr. Holifield and Mr. Brown are in agreement that we have gotten off on a tangent, because I don't think there is any dispute as to the merits of the legislation. Reading from the 1963 committee report, the additional views of Mr. Brown, Mr. Anderson, and Mr. Horton, they said—

The undersigned are not opposed to the extension of the Reorganization Act of 1949, as amended, because it has been demonstrated as a useful tool to promote economy and efficiency in the executive branch of Government.

In the separate views of Messrs. Brown, Anderson, and Horton, they recommended an amendment to section 2, paragraph (1), that reads as follows—

Paragraph (1) of subsection (a) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3) is amended to read as follows:

(1) Creating any new executive department, or abolishing or transferring an executive department or all the functions thereof, or consolidating any two or more executive departments or all the functions thereof—

Do you recall whether that was enacted into law?

Mr. SEIDMAN. Yes. This is one of the points I made. This was enacted into law and it seems to me that really there was a number of controversial elements. One was the constitutional majority. And one on the creation of executive departments.

We have now disapproval by a simple majority and the President cannot use this procedure to establish executive departments, thus those elements of the procedure which were controversial have been eliminated.

Mr. ROSENTHAL. The point I am trying to make is in 1963 we did restrict the authority of the President to create new departments?

Mr. SEIDMAN. That is correct.

Mr. BROWN. Remember the conception of the reorganization plan. That wasn't what the Hoover Commission talked about. That was not the idea. It was to consolidate, to eliminate, to do these things that could be done, not to create anything new—we are too busy doing that now.

Mr. ROSENTHAL. I am merely trying to find out what the situation is today. I don't disagree with anything you say. The point is as of today, with the amendment, regardless of who the author was, and I certainly give credit to those who it might be, that the President cannot, under the act today, recommend any new departments?

Mr. SEIDMAN. He cannot establish any executive departments by the use of this act, nor can he abolish any executive department.

Mr. ROSENTHAL. So if he were to recommend a new department, such as he did, for example, in the housing message yesterday, this would come up by independent legislation?

Mr. SEIDMAN. Yes.

Mr. BROWN. It would have to be created by law. There ought to be just some little corner, someplace, left where Congress can have some activity, some part in connection with the Government.

Mr. ROSENTHAL. We have that under the act, with the 1936 amendment. The only thing I want to emphasize for the record, what was

the exact period of hiatus, when the President didn't have this authority?

Mr. SEIDMAN. I think we have that in the record here already, Mr. Rosenthal.

Mr. ROSENTHAL. Might we have it again, the total number of months each time.

Mr. SEIDMAN. They were from June 1, 1963, to July 2, 1964, 13 months; June 1 to September 4, 1957—that is approximately 3 months; and June 1, 1959 to April 7, 1961.

Mr. ROSENTHAL. Is it your opinion, Mr. Seidman, that these gaps inhibited your ability to function in this area?

Mr. SEIDMAN. I think not my ability, but I think it inhibited the ability of the President to function.

Mr. ROSENTHAL. I have no further questions.

Mr. BROWN. Where did a President fail to function at that time?

Mr. SEIDMAN. I think there were certain——

Mr. BROWN. What were they?

Mr. SEIDMAN (continuing). Reorganizations.

Mr. BROWN. What did a President want to do that he could not do, or didn't do?

Mr. SEIDMAN. It is difficult for me to cite the specific examples, but I know there were ones.

Mr. BROWN. I don't either. I just wondered. I haven't seen many Presidents who didn't get their way pretty well.

Mr. ROSENTHAL. They certainly didn't have the legal authority to get their way during this period.

Mr. SEIDMAN. Let me be more responsive to Mr. Brown.

There would be a discussion, it was said, Well, we don't have reorganization authority, so it is not really worth following further, because of the lack of authority.

Mr. BROWN. Before you reorganize, you ought to study it anyhow. You agree with that?

Mr. SEIDMAN. That is correct.

Mr. BROWN. That is all. I think we just have the one problem, that is all.

Mr. SEIDMAN. Mr. Chairman, I might just mention briefly, in closing, I have served under four Presidents, and I don't think I have served under any President who was so concerned with the efficiency of the Government and the structure and organization of the Government as President Johnson. Certainly he has a major concern with this.

Mr. HENDERSON. And the President does have in mind some reorganizations, isn't that true?

Mr. SEIDMAN. That is true. He does.

Mr. BROWN. If we pass this bill promptly, you will have the opportunity to send them right up.

Mr. SEIDMAN. We still have authority. So you may have some before the bill is enacted.

Mr. BROWN. Yes, up to June 1.

Chairman DAWSON. We will take this matter up further in executive session.

(Whereupon, at 11 a.m., the subcommittee was recessed for the consideration of other matters.)

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TO AMEND THE REORGANIZATION ACT OF 1949

HEARING

BEFORE THE

SUBCOMMITTEE ON EXECUTIVE REORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 1134

TO FURTHER AMEND SECTION 5 OF THE REORGANIZATION ACT OF 1949, AS AMENDED

AND

S. 1135

TO FURTHER AMEND THE REORGANIZATION ACT OF 1949, AS AMENDED, SO THAT SUCH ACT WILL APPLY TO REORGANIZATION PLANS TRANSMITTED TO THE CONGRESS AT ANY TIME BEFORE JUNE 1, 1967

MARCH 29, 1965

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TO AMEND THE REORGANIZATION ACT OF 1949

MONDAY, MARCH 29, 1965

U.S. SENATE,
SUBCOMMITTEE ON EXECUTIVE REORGANIZATION,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1318 New Senate Office Building, Senator Abraham Ribicoff (chairman) presiding.

Present: Senators Ribicoff, Montoya, Harris, and Simpson.

Also present: Jerome Sonosky, staff director; Walter L. Reynolds, chief clerk, Government Operations Committee; and Eli E. Nobleman, professional staff member.

Senator RIBICOFF. The hearing will come to order.

OPENING STATEMENT OF THE CHAIRMAN

Senator RIBICOFF. We meet this morning to consider two bills which would extend the President's authority to transmit reorganization plans to Congress. President Johnson has clearly indicated his intention to reshape much of the organizational structure of the executive branch in order to more effectively carry out the programs and policies of his administration. To a large extent the goals of the Great Society are dependent on proper organization of the various Federal agencies responsible for translating the President's proposals into action. On February 8 the President submitted to the Senate his first reorganization legislative request in which he seeks permanent authority to transmit reorganization plans to effect changes in the Government's structure. On February 17 I introduced S. 1134, which would carry out the President's request.

The President's current authority was renewed last year but expires this coming June 1. Since the 81st Congress, the Committee on Government Operations has taken the position that the President's authority in this field should be limited to a specified period of time. Accordingly, Committee Chairman John L. McClellan has introduced S. 1135, which would extend the President's current authority an additional 2 years. That, then, is the issue here this morning. No one proposes to deny the President the authority he needs to effect reorganizations of his executive branch of the Government. The only question is, Should Congress surrender its authority over such important matters on a permanent basis and should it deny to future Congresses the right of periodic review of this question?

We are pleased to have with us this morning Mr. Harold Seidman, Assistant Director for Management and Organization, Bureau of the Budget, to present the administration's views on S. 1134 and S. 1135. You may proceed, Mr. Seidman.

We will insert in the record at this point copies of both bills. (The text of the bills referred to follows:)

[S. 1134]

A BILL To further amend section 5 of the Reorganization Act of 1949, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended, is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

[S. 1135]

A BILL To further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out "June 1, 1965" and inserting in lieu thereof "June 1, 1967".

Mr. SEIDMAN. Mr. Chairman, I have a prepared statement. With your permission, I will read it. I am accompanied by Mr. Fred Levi, who is the Assistant Chief of the Office of Management and Organization.

STATEMENT OF HAROLD SEIDMAN, ASSISTANT DIRECTOR FOR MANAGEMENT AND ORGANIZATION, BUREAU OF THE BUDGET, ACCOMPANIED BY FRED E. LEVI, ASSISTANT CHIEF, OFFICE OF MANAGEMENT AND ORGANIZATION

Mr. SEIDMAN. Mr. Chairman and members of the committee, I welcome this opportunity to appear before your subcommittee to testify in support of S. 1134, a bill to further amend section 5 of the Reorganization Act of 1949, as amended. I will discuss also S. 1135, a bill to further amend the Reorganization Act of 1949, as amended, so that such act will apply to reorganization plans transmitted to the Congress any time before June 1, 1967.

As President Johnson stated in his recent budget message to Congress:

> We have neither the resources nor the right to saddle our people with unproductive and inefficient Government organization services and practices. * * * We must reorganize and modernize the structure of the executive branch in order to focus responsibilities and increase efficiency.

The President has also emphasized that we must bring "the public service to the highest state of readiness." To assist him in achieving this objective the President has recommended that his authority to transmit reorganization plans under the Reorganization Act of 1949 be made permanent.

Pursuant to the President's request, S. 1134 would amend the Reorganization Act of 1949 by repealing section 5(b) and thereby eliminating the expiration date for the authority to transmit reorganization plans under the act. On the other hand, S. 1135 would only extend the expiration date of the President's authority until June 1, 1967.

There appears to be little dispute concerning either the usefulness of the procedures for accomplishing reorganization provided under

the Reorganization Act of 1949 or the need to renew the President's authority to transmit reorganization plans under that act. The one issue relates to the time limit on the President's authority. We are aware of the concerns expressed by some members of the Congress regarding the removal of the time limit on the President's authority to transmit reorganization plans. Under the reorganization act, as amended, however, the authorities of the Congress would appear to be protected amply by (1) the power to reject any reorganization plan by a simple majority of either House, and (2) the prohibition against the creation or abolition of executive departments by reorganization plan, without imposing any time limits on the President's authority. On the other hand, we believe that there are persuasive and valid reasons for now making the President's authority to transmit reorganization plans permanent, as would be provided by S. 1134.

First, a permanent authority to transmit reorganization plans would make that authority commensurate with the President's other responsibilities under the act. Under section 2(a) of the Reorganization Act of 1949, the President has a permanent duty to—

> examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary * * *.

However, this authority under the same act to transmit reorganization plans to effect changes in the Government's structure has, in the past, been limited to short periods of about 2 to 4 years. Under the present law, his authority will expire on June 1, 1965.

Second, there is the weight of Presidential and other experience. Four Presidents have recognized the need for permanent authority to transmit reorganization plans to the Congress.

In 1945, in a special message to the Congress, President Truman stated:

> * * * I ask the Congress to enact legislation which will make it possible to do what we all know needs to be done continuously and expeditiously with respect to improving the organization of the executive branch of the Government. In order that the purposes which I have in mind may be understood, the following features are suggested: (*a*) The legislation should be generally similar to the Reorganization Act of 1939, and part 2 of title I of that act should be utilized intact; (*b*) the legislation should be of permanent duration; (*c*) no agency of the executive branch should be exempted from the scope of the legislation; and (*d*) the legislation should be sufficiently broad and flexible to permit of any form of organizational adjustment, large or small, for which necessity may arise.

President Eisenhower, in his budget messages of 1960 and 1961, requested permanent authority to transmit reorganization plans. In 1961 he stated:

> Many of the numerous organizational improvements were affected by Presidential reorganization plans authorized by the Reorganization Act of 1949, which has now expired. The Congress should renew that authority and make it permanently available for all future Presidents in the effective form as originally enacted. The task of conforming Government organization to current needs is a continuing one in our ever-changing times.

In 1961, President Kennedy, through his Budget Director, indicated that—

> the reorganization plan device should be permanently available to the President and the Congress.

Most recently, President Johnson has requested permanent authority.

The first Hoover Commission on the Organization of the Executive Branch also recognized the need for permanent reorganization authority, stating that—

> the power of the President to prepare and transmit plans of reorganization to the Congress should not be restricted by limitations and exemptions.

Third, as President Truman indicated in a message to the Congress in 1949:

> The improving of the Government is a continuing and never-ending process. Government is a dynamic institution. Its administrative structure cannot be static. As new programs are established and old programs change in character and scope to meet the needs of the Nation, the organization of the executive branch must be adjusted to its changing tasks.

Since 1949, scientific and technological progress have accelerated the pace of change. New problems have arisen and President Truman's observations are even more relevant now. The Government needs organizational flexibility to cope with problems which may require new organizational solutions, and reorganization authority will help to achieve those solutions.

Despite these requirements, the President's authority has been limited, in the past, to periods from about 2 to 4 years. In fact, the authority has lapsed on several occasions. Thus, from June 1, 1957, to September 4, 1957, from June 1, 1959, to April 7, 1961, and from June 1, 1963, to July 2, 1964, Presidents were unable to use reorganization plans to carry out the responsibilities assigned to them under the Reorganization Act. These lapses, together with the uncertainty regarding each new extension, have presented serious obstacles to the development of a sound and comprehensive reorganization program. As the subcommittee is aware, reorganization proposals generally result from detailed studies and analyses and require extensive discussions both within the executive branch and the Congress before they are put into final form. Such discussions and studies may take 2 or more years. Mr. Chairman, for example—and this I think is a good example of the time it takes to develop a reorganization proposal—the customs reorganization which is now before this committee indicates that it takes at least 2 years to develop a reorganization proposal. The study leading to the proposal was announced by the Treasury Department on March 6, 1963. At that time a survey group was named to review and advise on the activities of the Customs Bureau. Of course, this announcement was preceded by several months of consideration as to whether such a study should be made.

On January 1, 1965, which is almost 2 years later, the Secretary of the Treasury informally transmitted a preliminary draft message and reorganization plan to the Director of the Bureau of the Budget.

On February 5, 1965, the Secretary of the Treasury formally transmitted the proposed message and reorganization plan to the Director of the Bureau of the Budget.

And on March 25, 1965, the President transmitted Reorganization Plan No. 1 of 1965 to the Congress.

You will note the period here is just about 2 years.

I might also point out that it should be recognized that reorganization authority is not effectively available for a full session of Congress. Each plan must lay before the Congress for at least 60 days. So, it is very unlikely that any plan would be submitted later than May 15 of any session of the Congress.

Over 30 years of experience with some sort of presidential reorganization authority indicates that it is required on a continuing basis. The need for this authority will continue to be great. It is one of the essential means of insuring that the executive branch of the Government can be organized to discharge effectively and efficiently its responsibilities.

President Johnson recently stated in his letter to the President of the Senate:

> The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.
>
> Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm, and effectiveness.
>
> The Congress itself recognizes these ideals and has many times approved the ideas and hopes of this request.

The Reorganization Act authorizes a simplified procedure for improving the structure and management of the executive branch. Under this procedure, a reorganization plan providing for the reorganization of executive agencies and transmitted to the Congress by the President takes effect after 60 days of continuous session of Congress (as defined in the act) unless either House of Congress passes a resolution of disapproval during the 60-day period. This procedure enables the President, as the responsible head of the executive branch, to initiate improvements in executive organization, and it reserves to the Congress effective powers of review and disapproval.

The Reorganization Act of 1949, as amended, contains two titles. Title I sets forth the responsibility of the President for preparing the reorganization plans, states certain requirements and limitations controlling the contents of the plans, and provides the procedure for their taking effect. Title II consists entirely of the special rules of the Congress governing the expeditious handling of reorganization plans by the Congress.

Section 2(a) of the act states the six purposes of the reorganization procedure:

> (1) To promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;
>
> (2) To reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;
>
> (3) To increase the efficiency of the operations of the Government to the fullest extent practicable;
>
> (4) To group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;
>
> (5) To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government and;
>
> (6) To eliminate overlapping and duplication of effort.

The desirability of these objectives is obvious. Subsection (b) of section 2 states:

> (b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding under the provisions of this Act, and can be accomplished more speedily thereby than by the enactment of specific legislation.

Accordingly, section 2 not only sets forth the objectives to be sought by the Reorganization Act but points out that they can be accomplished, and accomplished more speedily under the reorganization plan procedure.

The Reorganization Act specifically authorizes the undertaking of five basic types of "reorganizations" by reorganization plan. Those are: (1) transfer, (2) consolidation, (3) coordination, or (4) abolition of the whole or any part of any agency or of the functions of any agency, and (5) the authorization of any officer to delegate any of his functions. "Agency" is defined to mean "any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government," and any and all parts of the District of Columbia except the courts.

The Reorganization Act has become a well-accepted and proven tool for helping to keep the executive branch well organized to meet its current needs and for attacking the problems of ineffectiveness, inefficiency, or uneconomical operations of Government. It affords a useful, expeditious and successful procedure by which the President may present, and the Congress may review, proposals for the reorganization of agencies and activities of the executive branch of the Government.

The cooperative executive-legislative approach authorized in the reorganization act was adopted after long experience had demonstrated that improvements in organization were difficult to achieve when the sole way of correcting defects was to rely upon the passage of specific legislation. Improvements were long delayed and often overdue when a reorganization contained in a bill had to pursue its course through the legislative machinery and compete for attention with urgent substantive legislation. The reorganization act permits an alternative, or supplemental, way of approaching this problem, and it does so by clearly placing the responsibility for initiating improvements upon the President. In addition, it is an approach which provides ample safeguards for the rights of anyone who wishes to be heard for or against any particular proposed change.

The provisions of the present reorganization act have been developed over the past 33 years. The first statute was undoubtedly experimental. Successive and successful improvements have been made since then. Presidential initiation of organizational improvements subject to congressional review was authorized by the Economy Act of 1932. Under that act, the President could provide for certain reorganizations of executive agencies by executive orders which had to lie before the Congress for 60 days subject to disapproval by a simple majority of either House of the Congress.

In the Economy Act of 1933 changes were made to strengthen the procedure. It provided that Presidential orders making reorganiza-

tions would automatically take effect after lying before the Congress for 60 days. The Congress could prevent such an order from taking effect only by enacting specific legislation. The reorganization provisions of the Economy Act of 1933 remained in effect until March 19, 1935, during which time 8 principal and over 15 subsidiary orders took effect and none was disapproved.

This cooperative executive-legislative approach to reorganization was revived with the enactment of the Reorganization Act of 1939. That act authorized reorganization plans as we know them today. Reorganization plans, prepared by the President, were transmitted to the Congress and became effective after 60 days unless disapproved by a concurrent resolution passed by both Houses of the Congress. Five major reorganization plans were transmitted in 1939 and 1940 and all took effect.

During World War II, emergency powers were vested in the President to make wartime reorganizations by Executive order without congressional review. But after the war, the Congress enacted the Reorganization Act of 1945, closely patterned after, and continuing the procedure of, the Reorganization Act of 1939. During the almost 2½ years that the 1945 act was in effect, seven reorganization plans were transmitted to the Congress; four became effective, and three were disapproved.

The concurrent resolution procedure authorized by the 1939 and 1945 acts proved highly effective in those important prewar and postwar years. Those acts, however, contained a major defect; namely, they provided for the outright exemption of certain specified agencies and functions and the requirement for the special handling of others, thus preventing the application of the acts equally to all parts of the executive branch. Upon the recommendations of the President and the first Hoover Commission to make the reorganization plan procedure comprehensive in its scope, the Reorganization Act of 1949 contained no such exemptions or limitations. This was a major improvement in reorganization legislation. Coupled with that improvement was a change in the disapproval procedure.

The Reorganization Act of 1949 provided for congressional disapproval of a plan by the adoption of a resolution by a majority of the authorized membership of either House of the Congress. This was the so-called one-House, constitutional-majority disapproval arrangement. When the President's authority to transmit reorganization plans under the act was extended in 1959, this provision was deleted. Since that time a simple majority of either House has been able to disapprove a reorganization plan. In 1964, Congress provided that no reorganization under the act shall have the effect of—

> * * * creating any new executive department, or abolishing or transferring an executive department or all the functions thereof, or consolidating any two or more executive departments or all the functions thereof; * * *.

The period during which reorganization plans could be transmitted to the Congress under the Reorganization Act of 1949 was originally scheduled to expire March 31, 1953, but it has been extended five times and, as I mentioned earlier, now expires on June 1, 1965.

Great strides have been made since the Reorganization Act of 1949 became law on June 20, 1949. Sixty-eight reorganization plans have been transmitted to the Congress, and 49 have become effective.

Taking the broadest view, since the first Reorganization Act of 1939 became law, virtually the entire structure of the executive branch has been reshaped by changes made under the cooperative presidential-congressional approach embodied in the reorganization acts. Every agency in the Executive Office of the President has had its organization affected by actions under the reorganization acts. Every executive department has benefited from organizational adjustments made by reorganization plans; likewise, the Civil Service Commission, the Housing and Home Finance Agency, and many of the other major independent agencies have been reorganized. Viewed thus, the reorganization plan is a vital instrument for keeping our governmental house in order. One group, President Truman's Advisory Committee on Management, said in 1952:

> We therefore think there is good reason to regard the invention and acceptance of this tool for reorganization as the greatest single enabling step toward management improvement in the Federal Government in this generation. (Report to the President, December 1952, p. 6.)

The Reorganization Act of 1939 was enacted following the strong recommendation of the first Hoover Commission on Organization of the Executive Branch of the Government that the President be given authority to prepare and transmit plans of reorganization to the Congress. The Commission stated:

> This authority is necessary if the machinery of Government is to be made adaptable to the ever-changing requirements of administration, and if efficiency is to become a continuing rather than a sporadic concern of the Federal Government.

The very first recommendation of the second Hoover Commission on December 31, 1954, was as follows:

> As a result of unanimous vote at its meeting held on November 15, 1954, the Commission recommends to the Congress that the authority of the President to file reorganization plans, which expires on April 1, 1955, be extended. (P. 22, Progress report.)

Thus, each of the two Hoover Commissions has urged that the reorganization plan authority be continued as a means for attaining better Government organization.

The President, as Chief Executive, is responsible for the efficient management of the executive branch. As the tasks of Government become steadily more exacting, and as the range of Government's activities becomes more complex in response to the needs of our times, the importance of sound organization and management assumes critical proportions. Economy, efficiency, and clear lines of executive responsibility are central to the faithful execution of the laws. The authority to transmit plans under the reorganization act is an essential tool to aid the President in meeting his responsibilities.

Reorganization is a continuing necessity to insure optimum organizational arrangements adapted to changing programs and circumstances. For these reasons, I recommend that the Senate eliminate the expiration date on the President's authority to transmit plans to the Congress under the Reorganization Act of 1949, as amended, by enacting S. 1134.

Senator RIBICOFF. Mr. Seidman, thank you for your very fine presentation. I should like to ask you a few questions.

Mr. Seidman, generally haven't you done fairly well with the reorganization plans that you send up to Congress even under the past time limits?

Mr. SEIDMAN. When we have had authority, yes, sir.

Senator RIBICOFF. That is right. Whether you have 2 years or 4 years, haven't you found that you have done fairly well?

Mr. SEIDMAN. We have done fairly well with those plans that have been transmitted. But there has been a handicap in developing the President's reorganization program. When we have not had authority under the act, we have not invited Federal agencies—as we normally do when the authority is available—to subject reorganization plan proposals.

Senator RIBICOFF. The chairman of this parent committee, Senator McClellan, is occupied elsewhere. He is also a member of this subcommittee. You know, of course, of his longstanding interest in this matter. Last month Senator McClellan in a speech on the Senate floor stated that this committee has long taken the position that Congress should neither surrender nor abdicate its constitutional legislative authority in this area. Now, how do you react to the chairman's feeling and the feeling of many Members of the Senate that there is a constitutional limitation on our right as the Senate to give up this authority to the executive branch on a permanent basis? Would you want to comment on this constitutional question?

Mr. SEIDMAN. I would be glad to. I am fully conversant with the view of the chairman of this committee. And I have great respect for the opinions and judgments of Senator McClellan. It seems to me, however, that some of the objections that have been raised in the past to the reorganization authority being given to the President on a permanent basis are no longer applicable.

Under the earlier acts, for example, it took a concurrent resolution of both Houses of Congress to defeat a plan.

Under the 1949 act it took a constitutional majority of either House to defeat a plan.

Under the current provisions of the act a simple majority of either House of the Congress is sufficient to defeat a reorganization plan.

Furthermore, under the amendment made the last time the authority was renewed, the President is prohibited from using the act to establish an executive department.

So it seems to me that, when the Congress retains the authority to defeat any reorganization plan by a simple majority of either House, the constitutional authority of the Congress is thoroughly safeguarded without further action, because if the act is abused and the Congress objects to a plan, it only takes a simple majority to defeat it.

Senator RIBICOFF. At this point, I will insert in the record a study made by one of our very able staff members, Mr. Eli E. Nobleman, in which he analyzes the constitutional and legal aspects of the reorganization act. This is about as exhaustive study as has been put together on the subject. I think it should go in the record at this point for the benefit of the other members of the subcommittee.

If the other members of the subcommittee do not have copies of this, will the staff please see that they receive them?

(The study referred to follows:)

Constitutional and Legal Aspects of Reorganization Act Procedures, Pursuant to the Reorganization Act of 1949, as Amended

INTRODUCTION

The Reorganization Act of 1949, as amended, authorizes the President to submit reorganization plans to the Congress in order to accomplish certain stated purposes. Section 2 sets forth these purposes; section 3 lists the types of reorganizations which are authorized; section 4 specifies certain provisions which a reorganization plan may or must contain; section 5 contains limitations with respect to the reorganizations which may be accomplished; and section 6 provides that such plans shall become law unless they are disapproved by either House of the Congress by a majority of those present and voting, within 60 days of continuous session of the Congress. following the date of heir submission.

From time to time, it has been contended that this Act and some of its predecessor acts are unconstitutional because (1) the procedures provided therein constitute an unlawful delegation of its legislative powers by the Congress to the President; and (2) the Congress, in disapproving a reorganization plan, is exercising a legislative function in a manner not authorized by the Constitution. Although there have been no determinations by the courts of these questions, as they relate to the Reorganization Act of 1949, as amended, they underlying principle of unconstitutional delegations, as well as the so-called congressional veto, have been passed upon by the U.S. Supreme Court in a long line of cases, and the precise question, with respect to delegations, as it relates to earlier reorganization acts, has been dealth with in two lower court cases. It has also been discussed in a 1933 opinion of the Attorney General, and commented on in a 1949 memorandum prepared by the Department of Justice.

It is the purpose of this memorandum to examine briefly the cases referred to with a view to determining the constitutionality of the Reorganization Act of 1949, as amended.

BACKGROUND

The development of the doctrine of valid delegations of legislative authority

Article I, section 1 of the Constitution provides that "all legislative powers herein granted shall be vested in the Congress of the United States". Those who contend that the reorganization act procedures are unconstitutional argue that when the President submits plans which ultimately become law, unless disapproved in the manner required by the statute, he is legislating; therefore, the action of the Congress in authorizing such procedures contravenes article I, section 1 of the Constitution, and is an unconstitutional delegation of legislative powers.

An analysis of the applicable cases reveals that it has long been established that the Congress cannot delegate its legislative power to another branch of the Government, and this principle is embodied in the ancient maxim "delegata potestas non potest delegari" (a delegate cannot delegate or transfer his powers). However, the Supreme Court of the United States has, since the earliest times, distinguished between valid and invalid delegations, and has interpreted this maxim to mean only that if the Congress attempts to abdicate its legislative authority by transferring it to another branch, such a delegation would be held invalid.[1] On the other hand, where the Congress, having jurisdiction over the subject matter, has limited the delegation by a definite statement of congressional policy, defining the subject of the delegation and establishing definite standards and guides, leaving to other instrumentalities of the Government the exercise of judgment and discretion and, in the event of contingent legislation, the finding of the facts necessary to bring the stated congressional policy into operation, such action has uniformly been held to be valid.[2]

Thus, in a long line of cases, dating back to 1813, the Court has consistently upheld various broad delegations, authorizing the President or executive branch officers or agencies to promulgate regulations or to take whatever action they deem necessary, subject to specified limitations, to carry out the congressional policy established in the statute. In only three cases, during that entire period, has the Court declared invalid attempted delegations which, in its opinion, exceeded the bounds of proper delegation and constituted an abdication of its legislative authority.[3]

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[1] The leading cases are reviewed in *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935).

[2] *The Brig Aurara*, 7 Cranch 832 (1813); *Field* v. *Clark*, 143 U.S. 649 (1892); *Buttfield* v. *Stranahan*, 192 U.S. 470 (1904); *Hampton & Co.* v. *United States*, 276 U.S. 394 (1928); *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Currin* v. *Wallace*, 306 U.S. 1 (1939); *Yakus* v. *United States*, 321 U.S. 414 (1944).

[3] *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935); *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Carter* v. *Carter Coal Co.*, 298 U.S. 283 (1936).

The development of this interpretation by the U.S. Supreme Court appears to be based upon a recognition of the ever-growing complexity of our National Government and the problems encountered by the Congress in attempting to cover, in detail, every possible situation and contingency which may occur. Thus, in *Panama Refining Co.* v. *Ryan*,[4] Mr. Chief Justice Hughes said:

"The Constitution provides that 'all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.' * * * And the Congress is empowered 'to make all laws which shall be necessary and proper for carrying into execution' its general powers. * * * The Congress manifestly is not permitted to abdicate, or transfer to others, the essential legislative functions with which it is * * * vested. Undoubtedly legislation must often be adopted to complex conditions involving a host of details with which the National Legislature cannot deal directly. *The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its functions in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply.* Without capacity to give authorization of this sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. * * *" [5] [Italic supplied.]

In another leading case, *Yakus* v. *United States*,[6] Mr. Chief Justice Stone, in upholding the constitutionality of a statute which delegated to an executive agency certain regulatory authority, said:

"The Constitution as a continuously operative charter of Government does not demand the impossible of the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate. *The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct * * *. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed framework.*[7] [Italic supplied.]

"*Nor does the doctrine of separation of powers deny to Congress the power to direct that an administrative officer properly designated for that purpose have ample latitude within which he is to ascertain the conditions which Congress has made prerequisite to the operation of its legislative command.* * * * [Italic supplied.]

"* * * [*T*]*he only concern of courts is to ascertain whether the will of Congress has been obeyed. This depends not upon the breadth of the definition of the facts or conditions which the administrative officer is to find but upon the determination whether the definition sufficiently marks the field within which the administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will.*[8] [Italic supplied.]

"* * * Congress is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officers. * * * It is free to avoid the rigidity of such a system, which might well result in serious hardship, and to choose instead the flexibility attainable by the use of less restrictive standards.

"* * * *Only if we could say that there is an absence of standards for the guidance of the administrator's action, so that it would be impossible in a proper proceeding to determine whether the will of Congress has been obeyed, would we be justified in overriding its choice of means for effecting its declared purpose* * * *." [9] [Italic supplied.]

In *Hampton v. United States*,[10] the Supreme Court sustained as constitutional a statute which authorized the President to increase or decrease tariff rates, following certain findings of fact and in accordance with specific criteria, holding that

[4] 293 U.S. 388 (1935).
[5] Id., at 421.
[6] 321 U.S. 414 (1944).
[7] Id., at 424–425.
[8] Id., at 425.
[9] Id., at 425–426.
[10] 276 U.S. 394 (1928).

legislative action laying down an intelligble principle to which a person or body is to conform does not constitute a forbidden delegation of legislative power.

Mr. Chief Justice Taft, addressing himself to the argument that the statute constituted an unconstitutional delegation of legislative powers, said:

*"The field of Congress involves all and many varieties of legislative action, and Congress has found it frequently necessary to use officers of the executive branch, within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalizing a breach of such regulations. * * *"*[11] [Italic supplied.]

*"Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent upon future conditions, and it may leave the determination of such time to the decision of the Executive * * *."*[12] [Italic supplied.]

The foregoing cases all dealt with the question of a proper as against an improper delegation, and involved the validity of statutes by which the Congress delegated certain authority to the executive branch. In none of them was the question of the so-called congressional veto involved. This question was dealt with in *Sibbach* v. *Wilson, Inc.*,[13] a leading case in which the validity of a congressional delegation to the judicial branch was questioned. In this case, a statute, which authorized the Supreme Court of the United States to prescribe rules for the district courts of the United States, was challenged as an unconstitutional delegation of legislative power. The statute set forth congressional policy and provided that the rules prescribed were not to become effective until they had been submitted to the Congress "at the beginning of a regular session and until after the close of such sessions". Two of the rules were challenged as unauthorized on the ground that they exceeded the authority granted to the Supreme Court by the statute and failed to conform to the policy laid down by the Congress in the statute.

In holding these rules to be a valid exercise by the Supreme Court of its authority, the Court said (Mr. Justice Roberts):

"* * * the new policy envisaged in the enabling act of 1934 was that the whole field of court procedure be regulated in the interest of speedy, fair and exact determination of the truth. The challenged rules comport with this policy. Moreover, in accordance with the act, the rules were submitted to the Congress so that that body might examine them and veto their going into effect if contrary to the policy of the legislature.

"The value of the reservation of the powers to examine proposed rules, laws and regulations before they become effective is well understood by Congress. It is frequently, as here, employed to make sure that the action under the delegation squares with the congressional purpose.* * *"[14]

The doctrine of valid delegations of legislative power as applied to Reorganization Act procedures

As previously stated, the precise question of the constitutionality of delegation procedures established by reorganization acts was before the courts in two cases, both of which involved an interpretation of the Executive Department Reorganization Act of 1932, as amended.[15] The original 1932 act was substantially identical with the 1949 act, as amended, in that it set forth congressional policy and provided for a Presidential finding of facts, following which the President was authorized to reorganize executive agencies by issuing an Executive order which would become law unless disapproved, within 60 days after submission, by a resolution approved by a simple majority of either House of the Congress. A 1933 amendment to this act removed the congressional control and provided that such plans would become law upon the expiration of the 60-day period, unless the Congress provided by law for an earlier effective date.

In the first case, *Isbrandtsen-Moller Co., Inc.* v. *United States*,[16] acting pursuant to the provisions of the act, the President issued an Executive order abolishing the U.S. Shipping Board and transferring its functions to the Department of Com-

[11] Id., at 406.
[12] Id., at 409.
[13] 312 U.S. 1 (1940).
[14] Id., at 14–15.
[15] *Isbrandtsen-Moller Co., Inc.* v. *United States*, 14 F. Supp. 407 (S.D. N.Y., 1936), affirmed on other grounds, 300 U.S. 139 (1937); *Swayne & Hoyt, Limited* v. *United States*, 18 F. Supp. 25 (D.C., 1936), affirmed on other grounds, 300 U.S. 297 (1937).
[16] 14 F. Supp. 407 (S.D. N.Y., 1936).

merce. The order was transmitted to the Congress, as required by the act, and became law on April 10, 1933. In November 1935, the Secretary of Commerce issued an order directing the Isbrandsten-Moller Co. to file with the appropriate bureau of the Department of Commerce, a list of the actual rates charged by it during a specified period. Under the Shipping Act of 1916, failure to comply was punishable by a fine of $100 per day for each day of noncompliance. The company thereupon brought an action for an injunction to prevent the Secretary of Commerce from enforcing the order, on several grounds, among them that the Congress could not constitutionally authorize the President to transfer to the Department of Commerce functions which had been conferred by statute on the Shipping Board, and that, therefore, the Executive Department Reorganization Act of 1932, as amended, under which the President acted, constituted an unconstitutional delegation to the President of legislative power. The court found that the Reorganization Act was constitutional, denied the injunction and dismissed the case.

In discussing the question of whether the Congress had authority to delegate reorganization authority to the President, the court said:

"There remains only the question of the power of Congress to do that. On this point we are concerned with power regardless of the wisdom or effect of its exercise as a matter of good public policy. Much of the complainant's argument has been directed to the public benefit which would flow from keeping the functions formerly of the Shipping Board independent and free from the direct control an Executive can exert over the Department of Commerce. Perhaps that is so, but that is for Congress to decide in the performance of its duty to legislate in the public interest, and so long as it acts within the scope of its power as the National Legislature its choice of means and methods is to be given effect.

"It is not, nor could it successfully be disputed that Congress had the power to to delegate to the Shipping Board in the manner it did so, the powers and duties that Board possessed before Executive Order No. 6166 was promulgated. The change which has been made clothes an executive department with the same powers and duties to be exercised in the same way as before. *We think that the same powers and duties which were properly delegated to the Shipping Board could be so delegated to any other person or body to which Congress should see fit to cause them to be transferred. It elected to have the President investigate and see what should be done in this regard in the furtherance of efficiency and economy and then adopted his decision. The result was to abolish the board whose existence was dependent upon the will of Congress and to delegate to the Department of Commerce the same powers and duties the board has possessed. This seems in accord with correct standards as to delegation of authority to act within proper limits prescribed by Congress. * * * Whether the delegation, assuredly proper in subject matter and lawfully defined in scope, purpose, and manner of exercise, should have been to an executive department, was within the sound discretion of Congress. As it did not confer upon anyone functions it was bound to keep and exercise for itself, there was no failure to preserve the required separation of governmental powers.* * * *" [17] [Italic supplied.]

In the second case, *Swayne & Hoyt, Limited*,[18] the authority of the Secretary of Commerce to regulate shipping under the Shipping Act of 1916 was again challenged on the ground, among others, that the transfer of these functions from the Shipping Board to the Secretary of Commerce by Executive order was unlawful. In sustaining the validity of the 1932 Reorganization Act, as amended, the court said:

"* * * The transfer of the former functions of the U.S. Shipping Board by Executive order to the Department of Commerce was, in our opinion, in all respects legal and effective to confer on the Secretary all the regulatory powers of the statute. The question is not new. Precisely the same point was urged in, *Isbrandtsen-Moller Company, Inc.*, v. *United States et al* (D.C.) 14 F. Supp. 407; and the opinion of Judge Chase so fully and, as we think, satisfactorily answers it that nothing more need be said, except to refer to that case and adopt its reasoning which we do." [19]

Reference was made earlier to a discussion of the constitutionality of Reorganization Act procedures in a 1933 opinion of the Attorney General. In January 1933, Attorney General Mitchell, responding to a request from President Hoover for an opinion, held that a proviso in an appropriation act, awaiting the President's signature, was unconstitutional. The act provided, among other things, for the appropriation of funds to refund taxes illegally or erroneously collected. The

[17] *Id.*, at 412–413.
[18] 18 F. Supp. 25 (D.C. 1936).
[19] *Id.*, at 28.

proviso provided that no tax refunds in excess of $20,000 could be made until the Joint Committee on Internal Revenue Taxation had examined, approved, and fixed the amount of the proposed refund and so notified the Commissioner of Internal Revenue. The Attorney General held that a proviso authorizing a joint committee of the Congress to make the final decision as to whether such refunds of taxes shall be made and to fix the amount thereof, was "obnoxious" to the Constitution because it attempted to entrust to members of the legislative branch executive functions in the execution of the law, and it further attempted to give a committee of the legislative branch power to approve or disapprove executive acts.[20]

In the course of his discussion and analysis, and by way of example of alleged congressional encroachment upon executive functions, the Attorney General discussed the provisions of the Executive Reorganization Act of 1932, enacted as title IV of the Legislative Appropriation Act for fiscal year 1933, and concluded that there was grave doubt as to its constitutionality.[21] As noted earlier, that act authorized the President, by Executive order, to consolidate, redistribute, and transfer various Government agencies and functions. It provided further for the transmittal of the President's reorganization orders to the Congress to become effective after 60 days, unless either branch of Congress, "within such 60 calendar days shall pass a resolution disapproving of such Executive order or any part thereof", in which event it "shall become null and void to the extent of such disapproval." Mr. Mitchell appeared to be particularly concerned over that portion of the act which authorized nullification of the order by resolution of either House of Congress.

In arriving at his conclusion, Attorney General Mitchell stated:

"It must be assumed that the functions of the President under this act were Executive in their nature or they could not have been constitutionally conferred upon him, and so there was set up a method by which one House of Congress might disapprove Executive action. No one would question the power of Congress to provide for delay in the execution of such an administrative order, or its power to withdraw the authority to make the order, provided the withdrawal takes the form of legislation. The attempt to give to either House of Congress, by action which is not legislation, power to disapprove administrative acts, raises a grave question as to the validity of the entire provision in the act of June 30, 1932, for Executive reorganization of governmental funtions." [22]

It is apparent that Attorney General Mitchell's observations concerning the validity of the Executive Reorganization Act of 1932 (title IV of the act of June 30, 1932) were nothing more than *obiter dictum*, since they were entirely collateral or incidental to the issue before him. His official opinion was concerned only with the constitutionality of proposed legislation dealing with tax refunds, and his objection to the reorganization provisions of the act of June 30, 1932, were stated by him merely as an example, that act having become law some 6 months prior to the issuance of his opinion. Accordingly, those remarks are in no way controlling and did not constitute either an official opinion, a precedent, or even a guide. This is further borne out by the fact that this opinion was neither cited nor referred to in the two cases referred to above, which dealt specifically with the validity of the Executive Reorganization Act of 1932, as amended by the act of March 3, 1933.

Attorney General Mitchell's remarks concerning the validity of the reorganization procedures prescribed in the 1932 act have been referred to and discussed in this memorandum, not because they are considered authoritative, but because they have been relied upon, from time to time, to support the position of those who contend that these and similar procedures provided for in subsequent reorganization acts are either unconstitutional or of doubtful validity.[23] Furthermore, during hearings by this committee on S. 526, a companion bill to H.R. 2361, ultimately enacted as the Reorganization Act of 1949,[24] the Mitchell opinion was referred to on several occasions. In addition, the question of the constitutionality of a procedure by which the Congress would be authorized to disapprove a re-

[20] 37 Ops. Atty. Gen. 56 (Jan. 24, 1933).
[21] *Id.*, at 6364.
[22] *Ibid.*
[23] H. Rept. 187, 82d Cong., pp. 12–17; H. Rept. 6, 83d Cong., pp. 13–23; H. Rept. 657, 85th Cong., pp. 12–13; H. Rept. 195, 87th Cong., pp. 13–14.
[24] Public Law 109, 81st Cong.

organization plan by either a simple resolution of one House of Congress or a concurrent resolution of both Houses was raised and discussed.[25]

Following the close of the hearings, in an effort to clarify this issue, the chairman of the committee addressed a letter to Attorney General Tom C. Clark, calling his attention to the Mitchell opinion, and requesting Mr. Clark's opinion as to the constitutionality of such procedures, in view of the language contained in the Mitchell opinion casting doubt on the validity of that portion of the 1932 act which provided for disapproval of reorganization orders by simple resolution of either House. More specifically, Attorney General Clark was requested to submit his opinion on two questions: (1) Can congressional disapproval be effected constitutionally by a simple resolution of either House of the Congress? (2) Can such disapproval be effected constitutionally by a concurrent resolution of both Houses of the Congress?

The Department of Justice, after noting that the Attorney General was not authorized to furnish opinions to Members of Congress or committees thereof, submitted a memorandum, in lieu of testimony before the committee, which was incorporated in the committee's report on S. 526.[26] Following a review of the Mitchell opinion and a statement to the effect that his remarks concerning reorganization procedures were *obiter dictum*, the memorandum stated:

"* * * Attorney General Mitchell's opinion, insofar as it intimated the unconstitutionality of the reorganization provisions of the act of June 30, 1932, was based upon an unsound premise; namely, that the Congress in disapproving a reorganization plan is exercising a legislative function in a nonlegislative manner. But the Congress exercises its full legislative power when it passes a statute authorizing the President to reorganize the executive branch of the Government by means of reorganization plans. At that point the Congress decides what the policy shall be and lays down the statutory standards and limitations which shall be the framework of Executive action under the reorganization act. If the legislation stops there, with no provision for future reference to the Congress, the President's authority to reorganize the Government is complete. Indeed, such authority was given in full to President Roosevelt in the Reorganization Act of 1933 (47 Stat. 1517).

"The question of the legality of the delegation by the Congress of the power to the President to reorganize the executive branch of the Government has been resolved not only by previous Congresses but also by the courts. Witness the Reorganization Acts of 1933, 1938, and 1945. (See also *Isbrandtsen-Moller Co.* v. *United States*, 14 F. Supp. 407 (3-Judge Dist. Ct., S.D. N.Y.), affirmed on other grounds, 300 U.S. 139; *Swayne & Hoyt* v. *United States*, 18 F. Supp. 25 (3-Judge Dist. Ct., D.C.), affirmed on other grounds, 300 U.S. 297; *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 15.)

"The pattern of the 1939 and 1945 Reorganization Acts has been to give the reorganization authority to the President, and then provide machinery whereby the Congress may approve or disapprove the plans proposed by the President. Such approval or disapproval by the Congress or either House thereof is not a legislative act. Nor is it, in the circumstances, an improper legislative encroachment upon the Executive in the performance of functions delegated to him by the Congress. As indicated above, the authority given to the President to reorganize the Government is legally and adequately vested in the President when the Congress takes the initial step of passing a reorganization act.

"The question here raised relates to the reservation by the Congress of the right to disapprove action taken by the President under the statutory grant of authority. Such reservations are not unprecedented. There have been a number of occasions on which the Congress has participated in similar fashion in the administration of the laws. An example is to be found in section 19 of the Immigration Act of 1917, as amended (8 U.S.C. 155(c); Public Law 863, 80th Cong.), which requires the Attorney General to report to the Congress cases of suspension of deportation of aliens and which provides further that 'if during the session of

[25] Hearings before the Committee on Expenditures in the Executive Departments, 81st Cong., 1st sess. on S. 526, pp. 15, 26–27, and 37.

In its report on S. 1120, 79th Cong., later enacted, with amendments, as the Reorganization Act of 1945, the Senate Committee on the Judiciary, referring to the provision for disapproval by either House, stated that "Such a delegation of legislative power does not operate to deprive either House of the Congress of its constitutional right to have no change made in the law relating to the organization of the Government without the assent of at least a majority of its numbers present and voting." S. Rept. 638, 79th Cong., p. 3.

See also, Ginnane, Robert W., "The Control of Federal Administration by Congressional Resolutions and Committees", 66 Harv. L. Rev. 569, 576–582 (1953).

[26] S. Rept. 232, 81st Cong., pp. 18–20. This memorandum replied only to the question of congressional disapproval by concurrent resolution and not to the inquiry concerning simple resolutions, probably due to the fact that both the Senate and House bills, as introduced, provided for disapproval by concurrent resolution.

the Congress at which a case is reported * * * the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel the deportation proceedings. * * * If, prior to the close of the session of the Congress next following the session at which case is reported, the Congress does not pass such a concurrent resolution, the Attorney General shall thereupon deport such alien * * *.' The Congress has thus reserved the opportunity to express approval or disapproval of Executive actions in a described field.

"Still other examples may be found in the laws relating to the administration by the Secretary of the Navy of the naval petroleum reserves, which require consultation by him with the Armed Services Committees of the Congress before he takes certain types of action, such as entering into certain contracts relating to those reserves, starting condemnation proceedings, etc. (34 U.S.C. 524); and in the statute which requires the Joint Committee on Printing to give its approval before an executive agency may have certain types of printing work done outside of the Government Printing Office (44 U.S.C. 111).

"It cannot be questioned that the President in carrying out his Executive functions may consult with whom he pleases. The President frequently consults with congressional leaders; for example, on matters of legislative interest—even on matters which may be considered to be strictly within the purview of the Executive, such as those relating to foreign policy. There would appear to be no reason why the Executive may not be given express statutory authority to communicate to the Congress his intention to perform a given Executive function unless the Congress by some stated means indicates its disapproval. The Reorganization Acts of 1939 and 1945 gave recognition to this principle. The President, in asking the Congress to pass the instant reorganization bill, is following the pattern established by those acts; namely, by taking the position that if the Congress will delegate to him authority to reorganize the Government, he will undertake to submit all reorganization plans to the Congress and to put no such plan into effect if the Congress indicates its disapproval thereof. In this procedure there is no question involved of the Congress taking legislative action beyond its initial passage of the reorganization act. Nor is there any question involved of abdication by the Executive of his Executive functions to the Congress. It is merely a case where the Executive and the Congress act in cooperation for the benefit of the entire Government and the Nation.

"For the foregoing reasons, it is not believed that there is constitutional objection to the provision in section 6 of the reorganization bills which permits the Congress by concurrent resolution to express its disapproval of reorganization plans."

SUMMARY AND CONCLUSION

Summarizing the holding of the leading cases discussed herein, it appears that a statute which delegates authority to the President or to an executive or judicial agency will be held to be constitutional if the following requirements are met: (1) Congress must itself have jurisdiction over the subject matter; (2) the delegation must be made to a public official or agency; (3) the statute must contain a definite statement of congressional policy, clearly defining the subject and extent of the delegation; and (4) if the legislation is to take effect in the future, there must be a statement of the facts which must be found to exist before the delegation can become operative. If these requirements are met, the delegation is valid, even though the statute gives the official or agency to whom authority is delegated considerable latitude in the exercise of judgment or discretion within which to ascertain the conditions which the Congress has made prerequisite to the delegation. However, such official or instrumentality must remain within the prescribed framework, and a reservation by the Congress, to review the action taken to determine if it is within the prescribed framework and policy of the delegation, is a further safeguard to insure compliance with the congressional mandate.

An analysis of the provisions of the Reorganization Act of 1949, as amended, reveals that it appears to meet all of the requirements for valid delegations developed by the courts during the past 150 years. Applying these tests to specific provisions of the act, it will be seen that (1) Congress has authority to prescribe the organization and structure of the executive branch departments and agencies and thus has jurisdiction over the subject matter; (2) the delegation made in the act is to the President and not to private individuals or groups; (3) specific congressional policy and the various objectives sought to be accomplished by the statute are clearly set forth in section 2, which, together with

sections 3, 4, and 5, define the subject and extent of the delegation; and (4) section 3 requires the necessary findings of fact and certification thereof to the Congress, before the authority delegated to the President can become operative. Finally, section 5 limits the duration of the authority delegated, and, section 6 provides for a congressional review of the action contemplated by the President, prior to its becoming effective, and enables the Congress to make certain that the action contemplated is within the prescribed framework and policy of the delegation.

As indicated earlier, the contention that the Reorganization Act of 1949, as amended, and its predecessor acts, are of doubtful constitutional validity has been based upon the nature and extent of the congressional delegations, and the procedure by which the Congress may reject presidential reorganization proposals. Concerning the nature and extent of delegations, it has been shown that the U.S. Supreme Court will sustain those which meet the requirements set forth above, provided they do not amount to an abdication of its powers by the Congress.[27] In this connection, it should be noted that most of the recent delegations sustained by the Court have involved either complex regulatory matters, or wartime or other emergency legislation, which could be handled effectively only by the President or other executive branch agencies, and in which, for these reasons, the Court showed a willingness to acquiesce.[28]

On the other hand, the delegations authorized by the reorganization acts are admittedly extremely broad in scope, delegating, as they do, to the President, a very substantial amount of authority which has been vested by the Constitution in the Congress, and which the Congress is quite capable of handling through normal legislative procedures. Furthermore, the elements of emergency and wartime requirements are absent, and delegations of great breadth and scope, which the Court was willing to sustain during periods of great national stress, as valid legislative delegations, might well be considered as legislative abdication when they involve the organization, structure, and functions of the executive branch of the Government, in the absence of a national emergency.

In an effort to give the President adequate authority to accomplish the objectives of the legislation, without abdicating its legislative authority and responsibility, the Congress, in enacting the Reorganization Act of 1949, incorporated provisions which enabled it to exercise control over the delegated authority without the consent of the individual to whom it had been delegated. This was accomplished by providing first, that the authority delegated to the President was of limited duration and not permanent, and, second, a procedure whereby the Congress could disapprove reorganization proposals submitted by the President.[29]

In connection with limiting the duration of the President's reorganization authority, the Senate Committee on Expenditures in the Executive Departments, predecessor of the Committee on Government Operations, at whose insistence this provision was added, explained its action in its report to the Senate, as follows:

"The House bill contained the administration's recommendation relative to eliminating time limitations included in previous acts; granting reorganization authority to the President on a permanent basis. The general consensus of witnesses appearing before this committee relative to this provision of the pending bills was that the 2-year limitation included in prior acts did not permit sufficient time for the President to prepare reorganization plans and submit them to Congress for action.

"This committee agreed with the latter point of view, but was of the opinion that Congress should retain some control which would permit periodical examinations of the authority, with a view to determining its effectiveness through reports from the President relative to reorganizations effected thereunder and savings and efficiency attained through such reorganizations, *so that the basic authority might be either extended or restricted, as may be required to meet the then existing circumstances.* To assure such review by Congress an amendment was adopted to provide for the expiration of the act as of April 1, 1953." [30] [Italic supplied.]

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[27] "* * * the Congress manifestly is not permitted to abdicate or transfer to others, the essential legislative functions with which it is * * * vested." Hughes, C. J., *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 421 (1935).

[28] "Undoubtedly legislation must often be adopted to complex conditions involving a host of details with—which the National Legislature cannot deal directly." Hughes, C. J., *Panama Refining Co.* v. *Ryan*, *op. cit*, *supra*. See also, *Hampton* v. *United States*, *supra*; *Currin* v. *Wallace*, *supra*; *Yakus* v. *United States*, *supra*.

[29] Public Law 109, 81st Cong., secs. 5(b) and 6(a).

[30] S. Rept. 232, 81st Cong., p. 17.

It may be of interest to note, in connection with the above statement, that since the enactment of the Reorganization Act of 1949, the Committee on Government Operations, as well as its predecessor, the Committee on Expenditures in the Executive Departments, has taken the position that the Congress should neither surrender nor abdicate its legislative authority over matters of such significance, on a permanent basis.

In its report to the Senate in the 86th Congress the committee stated that it was—

"* * * the consensus of the committee that the present Congress should not commit succeeding Congresses to the provisions of the reorganization act, but that each Congress should have the right to extend this authority to the President or to withdraw it as the necessity dictates at the time." [31]

As a matter of further interest, it may be noted that the position of this committee, as adopted by the Congress, was completely in accord with prior congressional action and precedent, since, with the exception of the initial act, the act of June 30, 1932, every subsequent reorganization act has granted reorganization authority to the President for a limited period of time. Although the 1932 act granted permanent authority, it was amended and superseded by the acts of March 3, 1933, and March 20, 1933, which limited the President's authority under the act to a period of 2 years.

With respect to disapproval procedures provided for by the reorganization act, the contention that the procedure which authorizes disapproval of a reorganization plan by one House of the Congress is of doubtful constitutionality, because it authorizes the Congress to legislate in a manner not provided for in the Constitution, appears to be without merit. When the Congress enacts the statute which authorizes the President to reorganize the executive branch of the Government, it has exercised its full legislative powers and the legislative process is complete. The subsequent actions required by the statute, including Presidential findings of fact, certification and submission to the Congress, are simply part of a conditional delegation of authority, designed to enable the Congress to determine whether the President is exercising his delegated authority within the terms of the delegation and in conformity with the congressional purpose.[32]

In closing, it should be noted that the purpose of this memorandum is to determine the constitutionality of the Reorganization Act of 1949, as amended, in the light of existing cases. Since that act provides for a delegation of reorganization authority by the Congress to the President of limited duration and for a fixed term, the conclusions arrived at in the foregoing discussion are not necessarily determinative or applicable to legislation which would grant such authority on a permanent basis. Furthermore, in the only two court decisions which dealt with the validity of delegations under a reorganization act and upheld such delegations, the authorizing legislation limited the President's authority to submit reorganization proposals to a period of 2 years.[33]

In view of the foregoing discussion, the delegation by the Congress to the President of the authority to reorganize departments and agencies of the Federal Government containing the safeguards now provided for in the Reorganization Act of 1949, as amended, is a valid delegation and does not violate the constitutional prohibitions against the delegation of legislative power.

ELI E. NOBLEMAN,
Professional Staff Member.

Approved:
WALTER L. REYNOLDS,
Chief Clerk and Staff Director

Senator RIBICOFF. Mr. Seidman, you raise some practical considerations as to why permanent authority is needed. But in dealing with the delicate relationship between the legislative and the executive branch, do you think we are justified as the legislative branch to give up some of our legislative responsibility just to make your job easier? When you are dealing with constitutional matters and the separation between the executive and legislative, don't you think

[31] S. Rept. 239, 86th Cong., p. 2.
[32] See remarks of the Senate Committee on the Judiciary in S. Rept. 638, 79th Cong., quoted supra, note 25.
[33] See cases cited supra, note 15. See also act of June 30, 1932 (47 Stat. 413), as amended and superseded by the act of March 3, 1933 (47 Stat. 1517) as amended by the act of March 20, 1933 (48 Stat. 16).

that we as legislators should go very slow in giving up any of the authority and powers that we may have?

Mr. SEIDMAN. I would agree, Mr. Chairman. But we have had experience with reorganization authority now for more than 30 years. It is not new or an experiment. And as I said before, I could understand the reluctance of the Congress to grant this authority on a permanent basis under the earlier versions of the reorganization act, when it took a concurrent resolution of both Houses of the Congress to defeat a plan, or when under the 1949 act, a plan could only be defeated by the constitutional majority of either House of the Congress. Now that the act provides that a simple majority of either House is sufficient to defeat a reorganization plan, and with the further amendment that the plan cannot be used by the President to establish, or for that matter abolish an executive department, I do not think there is any question of the Congress surrendering its powers in any way, because they are fully retained in its authority to act on a plan.

And then, of course, the Congress always retains the right to repeal the act if it considers that the act is abused or used unwisely.

Senator RIBICOFF. Well, it might be that Congress has the power to terminate this authority by positive legislative action, but then you run into a situation that once it had become permanent law, then the President could veto any effort to impose a time limit. Wouldn't another safeguard just work the other way and that is if you have the authority there should be an automatic termination which cannot be affected by the President? Otherwise, to do what you ask for would be giving up all the power that Congress has.

Mr. SEIDMAN. I don't quite understand how Congress surrenders its power if it just takes a simple majority of either House of the Congress to defeat a plan.

Senator RIBICOFF. If Congress gives the President permanent authority with no automatic termination date, I think under these circumstances Congress gives up a basic power.

Now, the question of delegation of authority permanently, bothers Senator McCellan and others, and it bothers me, frankly. I am inclined to feel that the fears of Senator McClellan, who has made a very deep study and has been living with this for a very long time, are justified. We are trying to work out some compromise or some way to handle this.

Suppose we gave the President this authority for 4 years? Suppose that, at the beginning of his term, every President would have this authority for 4 years instead of 2, but not have it permanently. In that way Congress would not be surrendering its authority permanently, and every 4 years Congress could take another look at this grant of authority to decide what they want to do with it. How would you react to a 4-year authorization as against a 2-year authorization or a permanent authorization?

Mr. SEIDMAN. I think, Mr. Chairman, the 4-year authorization would be far preferable to the 2-year authorization. A 4-year authorization would be more workable. It would not present some of the problems that are inherent in the 2-year limitation, with gaps from one year to another.

Senator RIBICOFF. Wouldn't this also mean that every President, when he comes in, would take a look at this—and each President has his own philosophy, his own thinking as to what he might want to do

with it—and then at the beginning of each 4 years, whoever is President of the United States can then come to the Congress and ask for his reorganization authority as he would like it? Then this would give us in the legislative branch a chance to take a look at this without permanently giving up the legislative authority we have in this matter?

Mr. SEIDMAN. That is correct, Mr. Chairman. And I think a number of the objections which I have cited to the 2-year authority would not apply with equal validity if the authority was available for 4 years.

Senator RIBICOFF. You see, we have a basic constitutional problem here. The fact that you say that Congress is safeguarded because we can defeat or reject by a simple majority any plan that is submitted does not grapple with the basic constitutional issue, which is whether Congress can or should give up a constitutional power and responsibility. I think the separation of powers of this Government is one of the geniuses of the American constitution. And I think that it would be tragic for the legislative branch to abdicate its legislative authority in violation of the Constitution. I would much rather have Congress wrestle with this every 4 years, or Congress make its own determination, instead of Congress saying that we are giving up a constitutional power. The philosophical problem we have I think is very important, taking into account our constitutional guarantees and the separation of powers that the Constitution provides for. This bothers me, frankly. And the other members of the committee will have their opportunity to express their points of view.

But I am deeply impressed with the memorandum submitted by Mr. Nobleman, and I am deeply impressed and respect the position taken by Senator McClellan, who has now lived with this—Mr. Reynolds, how many years?

Mr. REYNOLDS. Since shortly after the committee was created. The 1949 act was approved shortly after the submission of the reports of the first Hoover Commission in 1949.

Senator RIBICOFF. Am I correct that the constitutional question has bothered other members of the committee as well as the chairman?

Mr. REYNOLDS. That is right.

Senator RIBICOFF. Mr. Nobleman points out for the other members of the committee the hearings on matters such as this were started in February of 1949. And the question was then raised. Now, those of us who respect our powers and have assumed the responsibilities of Senators should go very slow in giving up our constitutional authority.

Mr. SEIDMAN. Mr. Chairman, as I indicated, I am familiar with Senator McClellan's views, and I have read Mr. Nobleman's very excellent memorandum.

I think, Mr. Chairman, 4 years would go a long way in overcoming many of the problems that we have at the present time in the use of the reorganization act authority. I think the position of the President and his predecessors, however, is that his authority to transmit plans under the act ought to be fully commensurate with the other permanent responsibilities which are placed on him by the act.

Senator RIBICOFF. Senator Montoya, did you have any questions?

Senator MONTOYA. I don't have any questions.

Senator RIBICOFF. Senator Simpson?

Senator SIMPSON. I came late, Mr. Chairman, unfortunately. But I have heard the chairman's interrogation and some of the responses

here. And I want to aline myself with the distinguished chairman with respect to his attitude in giving up some of our constitutional rights. I think over the years, we have probably given up time. And I think that it is easier to pass these bills and extend the time than it is to get a permanent measure through. I want to associate myself with the remarks of the chairman.

Senator RIBICOFF. Senator Harris?

Senator HARRIS. Mr. Chairman, I think you have hit the real core of the question on both bills. It seems to me that of the alternatives offered to us that the 4-year period is far preferable, because it eliminates most of the procedural problems, it seems to me, according to the testimony, and yet leaves in the Congress the question of whether this matter of procedure shall be continued indefinitely.

Senator RIBICOFF. Mr. Nobleman points out to me, and he has had the experience, that the 1932 act was the only measure which gave the President permanent reorganization authority. That was the act of June 30, 1932. However, it was superseded by a rider on the Appropriation Act of March 3, 1933, which limited the authority to 2 years. Now, this is one way of avoiding the veto, but it is not the best way to legislate.

I would like to place in the record at this time a chart listing the statutes which have provided the President with reorganization authority, indicating the duration, authority, and the methods provided for disapproval.

I shall also place in the record at this point a summary of action on reorganization plans submitted between 1939 and 1963, and a table showing the number of reorganization plans which were submitted by each of the Presidents who have been granted reorganization authority since 1939, and the period of time during which they had such authority.

(The chart and summary referred to follows:)

Duration of authority and termination date	Reorganization authority	Method of disapproval
Permanent	Reorganization Act of 1932: Title IV of the Legislative Appropriations Act for fiscal year 1933, Public Law 212, 72d Congress.	Simple resolution of either House.
2 years (Mar. 20, 1935)	Acts of March 3 and March 20, 1933: Amending and superseding the act of June 20, 1932.	No provision (enactment of law required).
2 years (Jan. 21, 1941)	Reorganization Act of 1939: Public Law 19, 76th Congress (act of Apr. 3, 1939).	Concurrent resolution.
Duration of war, plus 6 months, or such earlier time as designated by Congress.	Title I of War Powers Act of 1941 (act of Dec. 18, 1941).	No provision.
2 years and 3 months (Apr. 1, 1948).	Reorganization Act of 1945: Public Law 263, 79th Congress (act of Dec. 20, 1945).	Concurrent resolution.
4 years (Apr. 1, 1953)	Reorganization Act of 1949: Public Law 109, 81st Congress (act of June 20, 1949).	Majority of authorized membership of either House: Senate, 49; House, 218.
2 years (Apr. 1, 1955)	1953 amendment: Public Law 3, 83d Congress (act of Feb. 11, 1953).	Same as 1949 act.
2 years (June 1, 1957)	1955 amendment: Public Law 16, 84th Congress (act of Mar. 25, 1955).	Do.
2 years (June 1, 1959)	1957 amendment: Public Law 86-286 (act of Sept. 4, 1957).	Simple resolution of either House.
2 years (June 1, 1963)	1961 amendment: Public Law 87-18 (act of Apr. 7, 1961).	Do.
1 year (June 1, 1965)	1964 amendment: Public Law 88-351 (act of July 2, 1964) (no authority to create new executive departments).	Simple resolution.

SUMMARY OF ACTION ON REORGANIZATION PLANS SUBMITTED BETWEEN 1939 AND 1964

The first reorganization act which authorized the President to submit plans, rather than Executive orders was the Reorganization Act of 1939. Between the effective date of that act and 1964, a total of 80 plans have been submitted, of which 59 became effective and 21 were rejected.

Under the 1949 act, as amended, a total of 68 plans were submitted, of which 50 became effective and 18 were rejected.

The following table shows the actions under the Reorganization Acts of 1939, 1945 and 1949. The actions under the 1949 act are indicated by dates of extensions and amendments:

Reorganization acts extensions and amendments	Plans submitted	Became effective	Rejected
1939	5	5	0
1945	7	4	3
1949	41	30	11
1953	12	12	0
1955	2	0	2
1957	3	2	1
1961	10	6	4
Total	80	59	21

The following table shows the number of reorganization plans which were submitted by each of the Presidents who have been granted reorganization authority since 1939 and the period of time during which they had such authority:

Roosevelt	5 plans in 7 years
Truman	48 plans in 8 years
Eisenhower	17 plans in 8 years
Kennedy	10 plans in 3 years

Senator RIBICOFF. I think that the executive and the legislative branches get along better if there is mutual respect and understanding of their relative powers. I think that it is a very dangerous thing for the legislative branch to give up legislative authority and power. We are moving fast, and many things do take place. I think this Government can move fast. I know, looking at the four of us here, and the whole committee, that we are anxious to save money and increase efficiency, and I think you are going to find us very sympathetic to any reorganization plan which can move our country forward or can effect substantial savings in the budget expenditures. But I do think that we as Senators owe an obligation to the Constitution, just as the executive owes an obligation to the Constitution. And I would just want you to know—while the committee has not discussed this, I would be very reluctant to give up what I consider a constitutional, legislative right.

At this point, I would also like to insert in the record the speech made by Senator McClellan on February 12, 1965, in the Senate.

(The statement referred to follows:)

STATEMENT OF SENATOR JOHN L. MCCLELLAN, CHAIRMAN OF THE COMMITTEE ON GOVERNMENT OPERATIONS

Mr. President, on February 8, 1965, the President of the United States submitted a communication to the U.S. Senate with which he enclosed a draft of proposed legislation to further amend section 5 of the Reorganiztaion Act of 1949. This proposed legislation would grant authority to the President to submit reorganization plans to the Congress, which would become law, if not disapproved by a majority of the Members of either House of the Congress, within 60 days after submission thereof. Under existing law, the President's authority will expire on June 1, 1965. Senator Abraham A. Ribicoff, who has been designated as chairman of the Subcommittee on Executive Reorganization of the Committee

on Government Operations, will introduce the bill in the Senate to accord with the President's recommendations.

Mr. President, I desire to call the attention of this body to the fact that, with the exception of the initial reorganization act of 1932, every subsequent act has granted reorganization authority to the President for a limited period of time, varying from 1 to 4 years. Although the 1932 act granted permanent authority, some 9 months later it was amended and superseded by the acts of March 3, 1933, and March 20, 1933, which limited the President's authority to a period of 2 years.

Except for the 83d Congress, I have served as chairman of both the Committee on Government Operations and its predecessor, the Committee on Expenditures in the Executive Departments, since 1949, when the present act was approved. I also served on both Commissions on the Reorganization of the executive branch of the Government known as the First and Second Hoover Commissions.

In 1949, the then President requested permanent authority and submitted a draft bill to that effect. Extensive hearings were held by the committee and, after careful consideration, recommended that temporary, rather than permanent, authority should be granted. This recommendation, which was approved by the Congress, was based upon two considerations: first, that the granting of permanent authority would amount to an abdication of the legislative authority and responsibility vested by the Constitution in the Congress, and second, that the Congress should retain some control which would permit periodic examinations of the authority. Approval of the latter restriction afforded the Congress an opportunity to examine effectiveness of the act through reports from the President relative to reorganizations affected thereunder and savings and efficiency attained through such reorganization. By limiting the extensions to 2 years, each succeeding Congress was afforded an opportunity to determine whether the basic authority should be further extended or restricted as required to meet the then-existing circumstances.

In the initial enactment, however, the committee recommended that the Congress grant the authority for a period of 4 years, rather than limiting its life to the 81st Congress, because the committee then took the view that the 2-year period would not afford sufficient time for the President to prepare reorganization plans for submission to the Congress to fully implement the recommendations of the first Hoover Commission.

In the first 5 years following the approval of the Reorganization Act of 1949, there was a total of 51 reorganization plans transmitted to the Congress under authority of the act, of which 40 were permitted to become law by the Congress, or were incorporated in other acts. In the last 10 years, although the act was extended 3 times for periods of 2 years each, and the last for 1 year, 17 plans were submitted, of which 7 were rejected. This reflects a total of 50 plans which have become law since the approval of the act in 1949. In some instances the plans were disapproved because the House of Representatives or the Senate held that they were not in accord with the basic purposes of the act, going beyond reorganizations into areas of policy, which was in conflict with the intent of the Congress in approving the act in 1949.

Since the 81st Congress, the Committee on Government Operations has taken the position that the Congress shall neither surrender nor abdicate its constitutional legislative authority over matters of such significance on a permanent basis. This decision was further emphasized by the committee in its report on the bill which extended the President's authority for 2 additional years in the 86th Congress, following President Eisenhower's request for permanent reorganization authority. After noting the committee's earlier position, that the Congress should not surrender its authority over such important matters on a permanent basis, the report stated:

"In reaffirming its position at the present time, it is the consensus of the committee that the present Congress should not commit succeeding Congresses to the provisions of the Reorganization Act, but that each Congress should have the right to extend this authority to the President or to withdraw it as the necessity dictates at the time."

Mr. President, nothing that has occurred since the committee first took this position has altered the situation in any manner, and I know of no compelling reason why this policy should be changed at this time. Accordingly, I introduce for appropriate reference, a bill to extend the President's authority to submit reorganization proposals from its present expiration date, June 1, 1965, to June 1, 1967, for a period of 2 years.

Mr. President, in the committee's report on the last extension of the Reorganization Act approved in the 88th Congress (H.R. 3496) the report on the bill submitted to the Senate (S. Rept. 1057, 88th Cong.) contained (*a*) a comprehensive legislative history of reorganization acts approved from 1932 through 1963, (*b*) the executive reorganizations attempted or accomplished under the authority of these statutes, (*c*) reorganizations and reorganization proposals which occurred from the 80th through the 88th Congresses, (*d*) action taken on reorganization plans under the authority of the Reorganization Act of 1949, and (*e*) such additional information relative to reorganizations, proposed or accomplished, from the 80th through the 88th Congresses.

Finally, in order to shed additional light on the constitutional validity of the procedures provided for in the Reorganization Act of 1949, as amended, I directed the staff of the Committee on Government Operations to prepare a comprehensive analysis dealing with constitutional and legal aspects of that statute and of the procedures provided therein, which was issued as Staff Memorandum No. 89–1–6, on February 9, 1965. Mr. President, I ask unanimous consent that this study, which I believe will prove of interest to all Members of Congress, be included in the body of the record at this point.

Senator RIBICOFF. And we will also insert the letter from the President submitting his request.

(The letter referred to follows:)

LETTER FROM PRESIDENT JOHNSON TO VICE PRESIDENT HUBERT HUMPHREY AND SPEAKER MCCORMACK

THE WHITE HOUSE.

DEAR MR. PRESIDENT (DEAR MR. SPEAKER): In my recent budget message I stated that "I will ask that permanent reorganization authority be granted to the President to initiate improvements in Government organization, subject to the disapproval of the Congress."

Accordingly, there is forwarded herewith a draft of legislation to further amend section 5 of the Reorganization Act of 1949. The bill would eliminate the expiration date for the authority to transmit reorganization plans to the Congress under the act.

Under section 2(a) of the Reorganization Act of 1949, the President has a duty to "examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary * * *. This responsibility under the statute is permanent. However, the authority to transmit reorganization plans to effect changes in the Government's structure has been limited to specified periods. The Congress has periodically extended that authority and last year renewed it until June 1, 1965.

With only a few lapses since 1932, authority generally similar to that conferred by the present Reorganization Act has been available to the Presidents then in office. The usefulness of the authority to transmit reorganization plans to the Congress and the continuing need for such authority to carry out fully the purposes of the Reorganization Act have been clearly demonstrated. The time has now come, therefore, to eliminate any expiration date with respect to that authority; the authority should be made commensurate with the responsibility of the President under the same statute.

From this authority will come benefits for the people whose Government this is.

The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.

Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm and effectiveness.

The Congress itself recognizes these ideals, and has many times approved the ideas and hopes of this request. It is in that spirit of the Congress I respectfully urge the Congress to an early and favorable consideration of the proposed legislation.

Sincerely,

LYNDON B. JOHNSON.

Senator RIBICOFF. Is there anyone else that you would like to testify?

Mr. SEIDMAN. No; I think this is a Presidential matter, I don't think there are any other agencies involved.

Senator RIBICOFF. You have received no request for any other witnesses, Mr. Reynolds?

Mr. REYNOLDS. No; Mr. Chairman.

Senator RIBICOFF. The Chamber of Commerce has submitted a statement which will be placed in the record at this point. If any other group or individual would like to file a statement, we will allow the record to stay open for the receipts of such statements.

(The statement referred to follows:)

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., March 29, 1965.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on Executive Reorganization, Senate Government Operations Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: The Chamber of Commerce of the United States approves the principle embodied in the Reorganization Act of 1949 to authorize the President ot submit reorganization plans to Congress. It supports a 2-year extension as provided in S. 1135, of the authority now scheduled to end on June 1, 1965.

Reorganization has proved an effective management tool in implementing desirable reorganizations and realinements of existing bureaus and agencies. But recognizing that the Reorganization Act permits, in effect, "legislation in reverse," in that it grants considerable power of legislative initiative to the Chief Executive, the Congress should retain strong safeguards over its utilization.

Use of the reorganization power to create a new department or agency with new or expanded functions involves much more than reorganization and enters far into the area of substantive legislation. For this reason the national chamber endorses retention of the amendment approved last year which restricted the creation of new executive departments.

In matters of such magnitude as the creation of new departments, the normal legislative process is the appropriate method for accomplishing the desired results. This process provides for appropriate hearings and affirmative, rather than negative, action by the Congress. Also, it retains the proper balance of authority between the legislative and executive branches regarding proposals which, while containing elements of a reorganizational nature, involve far more than mere reorganization.

As a further safeguard against too great a relinquishment of the legislative jurisdiction of Congress, the national chamber urges the Senate Executive Reorganization Subcommittee to approve S. 1135, which limits the extension of the President's authority to submit reorganization plans to a 2-year period. This action will insure a review of the reorganization plan procedure by the next Congress, and permit the inclusion of any additional improvements in the law which may become appropriate.

Sincerely,

THERON J. RICE.

(The following communication was subsequently received for the record:)

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., March 31, 1965.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Executive Reorganization Subcommittee, Government Operations Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: On behalf of the National Association of Manufacturers, I am writing you to comment briefly regarding S. 1134, designed to extend the Reorganization Act of 1949, as amended.

Without commenting in any detail regarding the provisions of the above-named act, I should like to convey our support and approval of the 2-year limitation on the extension of this act as provided for in S. 1135. Our views in this regard stem from the fact that the reorganization authority is a very definite

delegation of legislative authority to the President. In view of this, we feel that the constitutional concept of separation of powers between the executive, legislative, and the judiciary are best served when this delegation is subjected to a review by each Congress. In view of the foregoing, I should like to recommend and urge that any extension of this act be limited as indicated.

I would appreciate it if this statement of views could be incorporated in the printed hearings of your subcommittee on this important legislation.

Sincerely yours,

LAMBERT H. MILLER,
General Counsel.

Senator RIBICOFF. Thank you very much, Mr. Seidman. Members of the staff will be getting together with you for further discussion to work this out. We want to work with the President.

May I say that I approve the statement of the President that he intends to put forth many reorganization plans. I feel that the structure of our Government is often outmoded. I feel that we are basically operating in the Federal Government on the basis of thoughts and ideas and the problems that existed in 1933. We have been working on organization since 1933. Many things have taken place, and the country has moved on. I do think that we have to update the entire Federal establishment. I think that many of us here are very sympathetic to reorganization of our Government to be more effective and more economical. I think it can be much better done on a cooperative basis between the executive and legislative branch instead of just having one branch of the Government having all the say. I think you will find Congress very cooperative.

Thank you very much.

We will adjourn subject to the call of the Chair.

(Whereupon, at 10:25, the subcommittee adjourned subject to the call of the Chair.)

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LEGISLATIVE HISTORY

Public Law 89-43
S. 1135

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Feb. 17, 1965	Sen. McClellan introduced and discussed S. 1135 which was referred to the Senate Government Operations Committee. Print of bill and remarks.
Mar. 3, 1965	House subcommittee voted to report H. R. 4623.
Mar. 17, 1965	House committee reported H. R. 4623 without amendment. H. Report No. 184. Print of bill and report.
Apr. 8, 1965	House Rules Committee reported resolution for consideration of H. R. 4623. H. Res. 326, H. Report No. 230. Print of resolution and report.
	Senate committee reported S. 1135 with amendment. S. Report No. 154. Print of bill and report.
Apr. 9, 1965	Senate passed S. 1135 as reported.
June 3, 1965	House passed S. 1135 without amendment.
	H. R. 4623 was tabled due to passage of S. 1135.
June 18, 1965	Approved: Public Law 89-43.

Hearings: S. Committee on S. 1134 and S. 1135

H. Committee on H. R. 4623.

DIGEST OF PUBLIC LAW 89-43

EXTENSION OF REORGANIZATION ACT OF 1949.

Amends the Reorganization Act of 1949, as amended, to extend from June 1, 1965 to December 31, 1968, the period during which the President may transmit reorganization plans to Congress.

H. R. 4623

A BILL

89TH CONGRESS
1ST SESSION

H. R. 4623

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1965

Mr. DAWSON introduced the following bill; which was referred to the Committee on Government Operations

A BILL

Further amending the Reorganization Act of 1949.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended, is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

89TH CONGRESS
1ST SESSION

H. R. 4623

A BILL

Further amending the Reorganization Act of 1949.

By Mr. DAWSON

FEBRUARY 9, 1965

Referred to the Committee on Government Operations

S. 1135

A BILL

H. R. 4623

A BILL

89TH CONGRESS
1ST SESSION

S. 1135

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1965

Mr. MCCLELLAN introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out "June 1, 1965" and inserting in lieu thereof "June 1, 1967".

89TH CONGRESS
1ST SESSION

S. 1135

A BILL

To further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967.

By Mr. McCLELLAN

FEBRUARY 17, 1965

Read twice and referred to the Committee on Government Operations

penses involved in training programs, determined by regulations prescribed by the Secretary of the Treasury.

Four other types of tax credits—those relating to foreign taxes paid, partially tax-exempt interest, retirement income, and investment in certain depreciable property—would continue unchanged as under existing law. Furthermore, amounts expended by an employer in these training programs would continue to be 100 percent deductible from his gross income.

The basic amount of the tax credit would be, as I have said, 7 percent of the total training expenses incurred. The maximum amount of the credit, however, would not exceed $25,000 plus 1¾ percent of the training expenses in excess of $25,000.

To qualify for the credit, the employer must, in the case of trainees not initially employed with the firm, hire the trainees upon completion of their training and keep them on the payroll for at least 12 months thereafter. If the trainee is employed with the firm when his training begins, he must remain with the firm at least 12 more months for the employer to claim the tax credit. In case the trainee becomes disabled or dies, of course, this requirement does not apply. Only expenses which are tax deductible as trade or business expenses may be included in computing the amount of the credit.

As in the existing personal property investment credit provisions, the Human Investment Act of 1965 contains a carryback and carryover feature. If the computed credit under the act for a given year exceeds the allowable amount for that year, the excess may be applied to the earliest of the 8 years beginning with the third previous year. That is, a 3-year carryback and a 5-year carryover are permitted. An unused credit carried back or ahead may not be applied in excess of the allowable maximum credit amount for the other year.

In cases where such unused credit may not be fully used in the year to which it has been carried, the excess remaining may be carried to successive specified years until it has been completely applied. Language is also included to provide that, where a net operating loss carryback is involved, credits carried back under this act shall not result in a tax amendment for any year more than 3 years in the past. In all these carryback and carryover provisions my bill is almost identical to the investment credit plan enacted into law by the Revenue Act of 1962.

Where the employer is not a corporation but a sole proprietorship, a partnership, or an affiliated group, my bill provides that such entity shall get no more than the credit allowed single business entities. A small business corporation may elect to apportion its training expenses pro rata among its shareholders for tax credit purposes. Similar provisions apply to estates and trusts.

The cost of this bill, in the form of reduced Federal revenues, is modest. Labor Secretary Wirtz has estimated that under the Manpower Development and Training Act it costs from $1,000 to $1,250 to train one trainee. Since on-the-job training is known to cost substantially less than the specialized programs under Manpower Development and Training Act, I have based my cost calculations on the lower figure in the range, $1,000 per trainee. Under my bill, the employer who provides the training would thus be allowed to claim a tax credit of about $70 per trainee. If 2 million workers were trained under the Human Investment Act provisions, the revenue loss would be in the neighborhood of $140 million—surely not an excessive amount in view of the substantial and widespread benefits to employers, employees, and the Nation as a whole.

The merits of this bill, it seems to me, are substantial and apparent.

It would help to upgrade the skills of America's labor force.

It would train workers for jobs that needed to be filled—and it would go far to guarantee their actual employment after training.

It would encourage training right on the job, supervised by the employer with a constant attention to his own specific needs.

It would insure that the new trainee would not have to move to accept a job after the training period—he would take a job in the same community with the same employer.

It would require no elaborate public training centers and no new Government office buildings.

It would cost practically nothing to administer; an employer's eligibility for credit would be determined as a part of the existing tax administration procedure.

It would minimize redtape, staffs, counsels, advisory committees, and all the other accessories of a burgeoning bureaucracy.

And rather than creating a new, publicly administered, specialized program, my bill would harness the might of American free enterprise to the service of American workers seeking a more productive and rewarding life for themselves and their families.

Mr. President, I earnestly hope that full hearings will be held on the Human Investment Act of 1965, and that before this session of Congress adjourns it will be voted into law.

TECHNICAL EXPLANATION

This measure is patterned after the investment credit provisions added to the tax law by the Revenue Act of 1962. It is analogous to that provision in almost every respect.

The Revenue Act of 1962 provided a credit against taxes for investment in certain depreciable property. The credit amounted to 7 percent of the qualified investment. There were, however, top limits of the credit measured by so much of the tax liability as does not exceed $25,000, plus 25 percent of the tax liability in excess of $25,000. Tax liability in this frame of reference meant the tax imposed without reference to personal holding company or accumulated earnings increments less credits against tax already provided for by law—foreign tax credit, dividend credit, tax exempt interest and retirement income credit.

In the case of a husband or wife filing a separate return the top limit is measured in terms of $12,500 of tax liability instead of $25,000 except where the spouse of the taxpayer has no qualified investment for or no unused carryback or carryover credit credits for such earlier investment to that tax year. The effect of this limitation is to put the same limit on sole proprietorships and partnerships as would be imposed on corporations.

Affiliated groups must reduce the top limit available to them individually by apportioning the top limit among the members of the group. Once again, this provision provides that related corporations or business groups shall get no more than the credit allowed single business entities.

A carryback and carryover are provided for any year in which the credit exceeds the limitations imposed. The excess is carried back to each of the 3 taxable years preceding the unused credit year and carried over to the 5 taxable years following the unused credit year. However, the top limit applies to the amounts allowable for credit for those carryback and carryover years. For example, if the tax credit for 1969 exceeded the limitation for 1969 by $10,000 then that $10,000 could be carried back to 1966. If, in 1966 the credit allowed amounted to $25,000 and the top limit for that year was $30,000 only $5,000 of the $10,000 carryback could be applied to the tax year 1966. The remaining $5,000 of unused credit could be applied to the 1967 tax year if there was any leverage between the credit for that year and the top limitation.

Where a net operating loss carryback causes an excess of credit over the top limitation the carryback provisions on the excess for that year are not available. In other words, where a net operating loss carryback to 1968 from 1965 wiped out or reduced taxable income for that year and a credit for investment in qualified property had been allowed for that year, 1965, the loss of the credit for that year because of its excess over the top limit—which was reduced by the application of the net operating loss carryback—cannot be recouped by a carryback to the 3 tax years preceding 1965, but can only be applied as a carryover to the succeeding 5 tax years. This restriction eliminates the possibility that tax returns would be subject to amendment for a full 6 prior years—3 carryback years for net operating loss plus 3 carryback years for unused investment credit.

To this point the Prouty plan and the investment credit plan of the Revenue Act of 1962 for investment in certain depreciable property are almost identical. Under the Prouty plan credit against taxes of 7 percent is allowed instead for investment in training programs for employees and prospective employees. Otherwise, the top limitation is computed in the same way. The same treatment is accorded married persons and affiliated groups. The same carryback and carryover provisions are made and the impact of net operating loss carrybacks

which reduce or eliminate the credit allowable is the same. Unlike the provisions for phasing in the credit for investment in property over the first year of the plan, however, a full credit is allowed for training expenses incurred in 1965.

The sole difference of substance between the Prouty plan and the credit for investment in property is in the nature of the investment or expenditure for which the credit applies training expenses.

Under the Prouty plan training expenses on which the credit is based includes expenses incurred for training any unemployed individual for employment with the taxpayer in a job requiring skills which the individual does not possess and expenses incurred for retraining a person already employed so that he can upgrade his skills and maintain the level of competence necessary for his continued employment with the taxpayer. In other words, it includes sums spent for training an employee so that he will not be displaced by automation.

Also included within the expenditures on which the credit is computed is a reasonable allowance for expenses of overhead, incurred by the taxpayer, which can be attributed to training programs. Under rules prescribed by the Secretary of the Treasury a credit shall be allowed for expenses for the purchase or lease of books, testing and training materials, classroom equipment, instructor's fees, and salaries and related items.

A credit will not be allowed on expenses which do not qualify as ordinary and necessary business expenses; nor will it be avaliable where the trainee fails to acquire employment status with the taxpayer for at least a 12-month period or, if already employed, leaves the taxpayer's employment within a 12-month period immediately following completion of his training, except, in each instance, where the failure to employ or the termination of employment results from the death or disability of the trainee involved.

Finally, similar in spirit to the amendment of the investment credit provisions which appeared in the Revenue Act of 1964 and which eliminated a section requiring a reduction in the value of the property, when computing depreciation to the extent of the credit taken, the Prouty plan in no way reduces or limits the deductibility of expenses of training incurred merely because a credit is also available based on those expenses. Such qualified expenses remain 100 percent deductible while at the same time a credit against tax in the amount of 7 percent of these expenses is fully allowed.

PROPOSED EXTENSION OF REORGANIZATION ACT OF 1949

Mr. RIBICOFF. Mr. President, I introduce, for appropriate reference, a bill to further amend section 5 of the Reorganization Act of 1949, as amended.

President Johnson has clearly indicated his intention to reshape much of the organizational structure of the executive branch in order to more effectively carry out the programs and policies of his administration. To a large extent the goals of the Great Society are dependent on proper organization of the various Federal agencies responsible for translating the President's proposals into action. As the President pointed out in the state of the Union message:

> For Government to serve these goals it must be modern in structure, efficient in action, and ready for any emergency. I am currently reviewing the structure of the executive branch. I hope to reshape and reorganize it to meet more effectively the tasks of today.

On February 8 the President submitted to the Senate his first reorganization legislative request in which he seeks permanent authority to transmit reorganization plans to effect changes in the Government's structure. The bill I introduce today would provide the President with the permanent reorganization authority he seeks. Any reorganization plan submitted to Congress under this authority would become law if not disapproved within 60 days by either the House or Senate.

In the past, Congress has limited the President's authority to submit reorganization plans to specified periods. The President's current authority was renewed last year but expires this coming June 1. It is necessary, therefore, to expedite consideration of the administration's request. As chairman of the Subcommittee on Executive Reorganization, I will begin public hearings on the subject soon. I have consulted with the chairman of the Committee on Government Operations, the Senator from Arkansas [Mr. McCLELLAN], who has given this question much thought and personal attention over the years. We are agreed that on so crucial a question, involving the basic relationships between the executive and legislative branches of our Government, serious consideration should be given not only the President's request, but also to the point of view of those who would limit this grant of authority to a specified period of time.

I ask unanimous consent to have printed at this point in the RECORD a copy of the President's letter transmitting his proposal.

The ACTING PRESIDENT pro tempore. The bills will be received and appropriately referred; and, without objection, the letter will be printed in the RECORD.

The bill (S. 1134) to further amend section 5 of the Reorganization Act of 1949, as amended, introduced by Mr. RIBICOFF, was received, read twice by its title, and referred to the Committee on Government Operations.

The letter presented by Mr. RIBICOFF is, as follows:

LETTER FROM PRESIDENT JOHNSON TO VICE PRESIDENT HUBERT HUMPHREY AND SPEAKER MCCORMACK

DEAR MR. PRESIDENT (DEAR MR. SPEAKER): In my recent budget message I stated that "I will ask that permanent reorganization authority be granted to the President to initiate improvements in Government organization, subject to the disapproval of the Congress."

Accordingly, there is forwarded herewith a draft of legislation "to further amend section 5 of the Reorganization Act of 1949." The bill would eliminate the expiration date for the authority to transmit reorganization plans to the Congress under the act.

Under section 2(a) of the Reorganization Act of 1949, the President has a duty to "examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary. * * *" This responsibility under the statute is permanent. However, the authority to transmit reorganization plans to effect changes in the Government's structure has been limited to specified periods. The Congress has periodically extended that authority and last year renewed it until June 1, 1965.

With only a few lapses since 1932, authority generally similar to that conferred by the present Reorganization Act has been available to the Presidents then in office. The usefulness of the authority to transmit reorganization plans to the Congress and the continuing need for such authority to carry out fully the purposes of the Reorganization Act have been clearly demonstrated. The time has now come, therefore, to eliminate any expiration date with respect to that authority; the authority should be made commensurate with the responsibility of the President under the same statute.

From this authority will come benefits for the people whose government this is.

The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.

Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm, and effectiveness.

The Congress itself recognizes these ideals, and has many times approved the ideas and hopes of this request. It is in that spirit of the Congress I respectfully urge the Congress to an early and favorable consideration of the proposed legislation.

Sincerely,

LYNDON B. JOHNSON.

PROPOSED FURTHER AMENDMENT OF SECTION 5 OF THE REORGANIZATION ACT OF 1949

Mr. McCLELLAN. Mr. President, on February 8, 1965, the President of the United States submitted a communication to the U.S. Senate with which he enclosed a draft of proposed legislation to further amend section 5 of the Reorganization Act of 1949. This proposed legislation would grant authority to the President to submit reorganization plans to the Congress, which would become law, if not disapproved by a majority of the Members of either House of the Congress, within 60 days after submission thereof. Under existing law, the President's authority will expire on June 1, 1965. Senator ABRAHAM A. RIBICOFF, who has been designated as chairman of the Subcommittee on Executive Reorganization of the Committee on Government Operations, has introduced the bill in the Senate to accord with the President's recommendations.

I desire to call the attention of this body to the fact that, with the exception of the initial Reorganization Act of 1932, every subsequent act has granted reorganization authority to the President for a limited period of time, varying from 1 to 4 years. Although the 1932

act granted permanent authority, some 9 months later it was amended and superseded by the acts of March 3, 1933 and March 20, 1933, which limited the President's authority to a period of 2 years.

Except for the 83d Congress, I have served as chairman of both the Committee on Government Operations and its predecessor, the Committee on Expenditures in the Executive Departments, since 1949, when the present act was approved. I also served on both Commissions on the Reorganization of the Executive Branch of the Government known as the first and second Hoover Commissions.

In 1949, the then-President requested permanent authority and submitted a draft bill to that effect. Extensive hearings were held by the committee and, after careful consideration, recommended that temporary, rather than permanent, authority should be granted. This recommendation, which was approved by the Congress, was based upon two considerations: First, that the granting of permanent authority would amount to an abdication of the legislative authority and responsibility vested by the Constitution in the Congress, and second, that the Congress should retain some control which would permit periodic examinations of the authority. Approval of the latter restriction afforded the Congress an opportunity to examine effectiveness of the act through reports from the President relative to reorganizations effected thereunder and savings and efficiency attained through such reorganization. By limiting the extensions to 2 years, each succeeding Congress was afforded an opportunity to determine whether the basic authority should be further extended or restricted as required to meet the then-existing circumstances.

In the initial enactment, however, the committee recommended that the Congress grant the authority for a period of 4 years, rather than limiting its life to the 81st Congress, because the committee then took the view that the 2-year period would not afford sufficient time for the President to prepare reorganization plans for submission to the Congress to fully implement the recommendations of the first Hoover Commission.

In the first 5 years following the approval of the Reorganization Act of 1949, there was a total of 51 reorganization plans transmitted to the Congress under authority of the act, of which 40 were permitted to become law by the Congress, or were incorporated in other acts. In the past 10 years, although the act was extended three times for periods of 2 years each, and the last for 1 year, 17 plans were submitted, of which 7 were rejected. This reflects a total of 50 plans which have become law since the approval of the act of 1949. In some instances the plans were disapproved because the House of Representatives or the Senate held that they were not in accord with the basic purposes of the act, going beyond reorganizations into areas of policy, which was in conflict with the intent of the Congress in approving the act in 1949.

Since the 81st Congress, the Committee on Government Operations has taken the position that the Congress shall neither surrender nor abdicate its constitutional legislative authority over matters of such significance on a permanent basis. This decision was further emphasized by the committee in its report on the bill which extended the President's authority for 2 additional years in the 86th Congress, following President Eisenhower's request for permanent reorganization authority. After noting the committee's earlier position, that the Congress should not surrender its authority over such important matters on a permanent basis, the report stated:

> In reaffirming its position at the present time, it is the consensus of the committee that the present Congress should not commit succeeding Congresses to the provisions of the Reorganization Act, but that each Congress should have the right to extend this authority to the President or to withdraw it as the necessity dictates at the time.

Mr. President, nothing that has occurred since the committee first took this position has altered the situation in any manner, and I know of no compelling reason why this policy should be changed at this time. Accordingly, I introduce for appropriate reference a bill to extend the President's authority to submit reorganization proposals from its present expiration date, June 1, 1965, to June 1, 1967, for a period of 2 years.

Mr. President, in the committee's report on the last extension of the Reorganization Act approved in the 88th Congress—H.R. 3496—the report on the bill submitted to the Senate —Senate Report No. 1057, 88th Congress—contained, first, a comprehensive legislative history of reorganization acts approved from 1932 through 1963; second, the executive reorganizations attempted or accomplished under the authority of these statutes; third, reorganizations and reorganization proposals which occurred from the 80th through the 88th Congresses; fourth, action taken on reorganization plans under the authority of the Reorganization Act of 1949; and, fifth, such additional information relative to reorganizations, proposed or accomplished, from the 80th through the 88th Congresses.

Finally, in order to shed additional light on the constitutional validity of the procedures provided for in the Reorganization Act of 1949, as amended, I directed the staff of the Committee on Government Operations to prepare a comprehensive analysis dealing with constitutional and legal aspects of that statute and of the procedures provided therein, which was issued as staff memorandum No. 89–1–6, on February 9, 1965. Mr. President, I ask unanimous consent that this study, which I believe will prove of interest to all Members of Congress, be printed at this point in the body of the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the material will be printed in the RECORD.

The bill (S. 1135) to further amend the Reorganization Act of 1949, as amended, so that such act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967, introduced by Mr. MCCLELLAN, was received, read twice by its title, and referred to the Committee on Government Operations.

The material presented by Mr. MCCLELLAN is as follows:

STAFF MEMORANDUM No. 89–1–6, SENATE COMMITTEE ON GOVERNMENT OPERATIONS, FEBRUARY 9, 1965

Subject: Constitutional and legal aspects of Reorganization Act procedures, pursuant to the Reorganization Act of 1949, as amended

INTRODUCTION

The Reorganization Act of 1949, as amended, authorizes the President to submit reorganization plans to the Congress in order to accomplish certain stated purposes. Section 2 sets forth these purposes; section 3 lists the types of reorganizations which are authorized; section 4 specifies certain provisions which a reorganization plan may or must contain; section 5 contains limitations with respect to the reorganizations which may be accomplished; and section 6 provides that such plans shall become law unless they are disapproved by either House of the Congress by a majority of those present and voting, within 60 days of continuous session of the Congress, following the date of their submission.

From time to time, it has been contended that this act and some of its predecessor acts are unconstitutional because (1) the procedures provided therein constitute an unlawful delegation of its legislative powers by the Congress to the President; and (2) the Congress, in disapproving a reorganization plan, is exercising a legislative function in a manner not authorized by the Constitution. Although there have been no determinations by the courts of these questions, as they relate to the Reorganization Act of 1949, as amended, the underlying principle of unconstitutional delegations, as well as the so-called congressional veto, have been passed upon by the U.S. Supreme Court in a long line of cases, and the precise question, with respect to delegations, as it relates to earlier reorganization acts, has been dealt with in two lower court cases. It has also been discussed in a 1933 opinion of the Attorney General, and commented on in a 1949 memorandum prepared by the Department of Justice.

It is the purpose of this memorandum to examine briefly the cases referred to with a view to determining the constitutionality of the Reorganization Act of 1949, as amended.

BACKGROUND

The development of the doctrine of valid delegations of legislative authority

Article I, section 1 of the Constitution provides that "all legislative powers herein granted shall be vested in the Congress of the United States." Those who contend that the Reorganization Act procedures are unconstitutional argue that when the President submits plans which ultimately became law, unless disapproved in the manner required by the statute, he is legislating; therefore, the action of the Congress in authorizing such procedures contravenes article I, section 1 of the Constitution, and is an unconstitutional delegation of legislative powers.

An analysis of the applicable cases reveals that it has long been established that the Congress cannot delegate its legislative power to another branch of the Government, and this principle is embodied in the ancient maxim "delegata potestas non potest delegari" (a delegate cannot delegate or transfer his powers). However, the Supreme Court of the United States has, since the earlicst

times, distinguished between valid and invalid delegations, and has interpreted this maxim to mean only that if the Congress attempts to abdicate its legislative authority by transferring it to another branch, such a delegation would be held invalid.[1] On the other hand, where the Congress, having jurisdiction over the subject matter, has limited the delegation by a definite statement of congressional policy, defining the subject of the delegation and establishing definite standards and guides, leaving to other instrumentalities of the Government the exercise of judgment and discretion and, in the event of contingent legislation, the finding of the facts necessary to bring the stated congressional policy into operation, such action has uniformly been held to be valid.[2]

Thus, in a long line of cases, dating back to 1813, the Court has consistently upheld various broad delegations, authorizing the President or executive branch officers or agencies to promulgate regulations or to take whatever action they deem necessary, subject to specified limitations, to carry out the congressional policy established in the statute. In only three cases, during that entire period, has the Court declared invalid attempted delegations which, in its opinion, exceeded the bounds of proper delegation and constituted an abdication of its legislative authority.[3]

The development of this interpretation by the U.S. Supreme Court appears to be based upon a recognition of the ever-growing complexity of our National Government and the problems encountered by the Congress in attempting to cover, in detail, every possible situation and contingency which may occur. Thus, in *Panama Refining Co.* v. *Ryan*,[4] Mr. Chief Justice Hughes said:

"The Constitution provides that 'all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives'. * * * And the Congress is empowered 'To make all laws which shall be necessary and proper for carrying into execution' its general powers. * * * The Congress manifestly is not permitted to abdicate, or transfer to others, the essential legislative functions with which it is * * * vested. Undoubtedly legislation must often be adopted to complex conditions involving a host of details with which the National Legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its functions in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. Without capacity to give authorization of this sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. * * *"[5]

In another leading case, *Yakus* v. *United States*,[6] Mr. Chief Justice Stone, in upholding the constitutionality of a statute which delegated to an executive agency certain regulatory authority, said:

"The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate. The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct * * *. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed framework.[7]

"Nor does the doctrine of separation of powers deny to Congress the power to direct that an administrative officer properly designated for that purpose have ample latitude within which he is to ascertain the conditions which Congress has made prerequisite to the operation of its legislative command. * * *

"[T]he only concern of courts is to ascertain whether the will of Congress has been obeyed. This depends not upon the breadth of the definition of the facts or conditions which the administrative officer is to find but upon the determination whether the definition sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will. * * *[8]

"Congress is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officers. * * * It is free to avoid the rigidity of such a system, which might well result in serious hardship, and to choose instead the flexibility attainable by the use of less restrictive standards. * * *

"Only if we could say that there is an absence of standards for the guidance of the Administrator's action, so that it would be impossible in a proper proceeding to determine whether the will of Congress has been obeyed, would we be justified in overriding its choice of means for effecting its declared purpose * * *."[9]

In *Hampton* v. *United States*,[10] the Supreme Court sustained as constitutional a statute which authorized the President to increase or decrease tariff rates, following certain findings of fact and in accordance with specific criteria, holding that legislative action laying down an intelligible principle to which a person or body is to conform does not constitute a forbidden delegation of legislative power.

Mr. Chief Justice Taft, addressing himself to the argument that the statute constituted an unconstitutional delegation of legislative powers, said:

"The field of Congress involves all and many varieties of legislative action, and Congress has found it frequently necessary to use officers of the executive branch, within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalizing a breach of such regulations. * * *[11]

"Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent upon future conditions, and it may leave the determination of such time to the decision of the executive * * *."[12]

The foregoing cases all dealt with the question of a proper as against an improper delegation, and involved the validity of statutes by which the Congress delegated certain authority to the executive branch. In none of them was the question of the so-called congressional veto involved. This question was dealt with in *Sibbach* v. *Wilson, Inc.*,[13] a leading case in which the validity of a congressional delegation to the judicial branch was questioned. In this case, a statute, which authorized the Supreme Court of the United States to prescribe rules for the district courts of the United States, was challenged as an unconstitutional delegation of legislative power. The statute set forth congressional policy and provided that the rules prescribed were not to become effective until they had been submitted to the Congress "at the beginning of a regular session and until after the close of such session." Two of the rules were challenged as unauthorized on the ground that they exceeded the authority granted to the Supreme Court by the statute and failed to conform to the policy laid down by the Congress in the statute.

In holding these rules to be a valid exercise by the Supreme Court of its authority, the Court said (Mr. Justice Roberts):

"The new policy envisaged in the enabling act of 1934 was that the whole field of court procedure be regulated in the interest of speedy, fair, and exact determination of the truth. The challenged rules comport with this policy. Moreover, in accordance with the act, the rules were submitted to the Congress so that that body might examine them and veto their going into effect if contrary to the policy of the legislature.

"The value of the reservation of the powers to examine proposed rules, laws, and regulations before they become effective is well understood by Congress. It is frequently, as here, employed to make sure that the action under the delegation squares with the congressional purpose. * * *[14]

The doctrine of valid delegations of legislative power is applied to Reorganization Act procedures

As previously stated, the precise question of the constitutionality of delegation procedures established by reorganization acts was before the courts in two cases, both of which involved an interpretation of the Executive Department Reorganization Act of 1932, as amended.[15] The original 1932 act was substantially identical with the 1949 act, as amended, in that it set forth congressional policy and provided for a Presidential finding of facts, following which the President was authorized to reorganize executive agencies by issuing an Executive order which would become law unless disapproved, within 60 days after submission, by a resolution approved by a simple majority of either House of the Congress. A 1933 amendment to this

[1] The leading cases are reviewed in *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935).

[2] *The Brig "Aurora,"* 7 Cranch 832 (1813); *Field* v. *Clark*, 143 U.S. 649 (1892); *Buttfield* v. *Stranahan*, 192 U.S. 470 (1904); *Hampton & Co.* v. *United States*, 276 U.S. 394 (1928); *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Currin* v. *Wallace*, 306 U.S. 1 (1939); *Yakus* v. *United States*, 321 U.S. 414 (1944).

[3] *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935); *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Carter* v. *Carter Coal Co.*, 298 U.S. 283 (1936).

[4] 293 U.S. 388 (1935).

[5] Id., at 421.

[6] 321 U.S. 414 (1944).

[7] Id., at 424–5.

[8] Id., at 425.

[9] Id., at 425–6.

[10] 276 U.S. 394 (1928).

[11] Id., at 406.

[12] Id., at 409.

[13] 312 U.S. 1 (1940).

[14] Id., at 14–15.

[15] *Isbrandtsen-Moller Co., Inc.* v. *United States*, 14 F. Supp. 407 (S.D.N.Y., 1936), affirmed on other grounds, 300 U.S. 139 (1937); *Swayne & Hoyt, Limited* v. *United States*, 18 F. Supp. 25 (D.C. 1936), affirmed on other grounds, 300 U.S. 297 (1937).

act removed the congressional control and provided that such plans would become law upon the expiration of the 60-day period, unless the Congress provided by law for an earlier effective date.

In the first case, *Isbrandtsen-Moller Co., Inc.* v. *United States,*[16] acting pursuant to the provisions of the act, the President issued an Executive order abolishing the U.S. Shipping Board and transferring its functions to the Department of Commerce. The order was transmitted to the Congress, as required by the act, and became law on April 10, 1933. In November 1935, the Secretary of Commerce issued an order directing the Isbrandtsen-Moller Co. to file with the appropriate bureau of the Department of Commerce, a list of the actual rates charged by it during a specified period. Under the Shipping Act of 1916, failure to comply was punishable for a fine of $100 per day for each day of noncompliance. The company thereupon brought an action for an injunction to prevent the Secretary of Commerce from enforcing the order, on several grounds, among them that the Congress could not constitutionally authorize the President to transfer to the Department of Commerce functions which had been conferred by statute on the Shipping Board, and that, therefore, the Executive Department Reorganization Act of 1932, as amended, under which the President acted, constituted an unconstitutional delegation to the President of legislative power. The Court found that the Reorganization Act was constitutional, denied the injunction and dismissed the case.

In discussing the question of whether the Congress had authority to delegate reorganization authority to the President, the Court said:

"There remains only the question of the power of Congress to do that. On this point we are concerned with power regardless of the wisdom or effect of its exercise as a matter of good public policy. Much of the complainant's argument has been directed to the public benefit which would flow from keeping the functions formerly of the Shipping Board independent and free from the direct control an Executive can exert over the Department of Commerce. Perhaps that is so, but that is for Congress to decide in the performance of its duty to legislate in the public interest, and so long as it acts within the scope of its power as the National Legislature its choice of means and methods is to be given effect.

"It is not, nor could it successfully be disputed that Congress had the power to delegate to the Shipping Board in the manner it did so, the powers and duties that Board possessed before Executive Order No. 6166 was promulgated. The change which has been made clothes an executive department with the same powers and duties to be exercised in the same way as before. We think that the same powers and duties which were properly delegated to the Shipping Board could be so delegated to any other person or body to which Congress should see fit to cause them to be transferred. It elected to have the President investigate and see what should be done in this regard in the furtherance of efficiency and economy and then adopted his decision. The result was to abolish the Board whose existence was dependent upon the will of Congress and to delegate to the Department of Commerce the same powers and duties the Board had possessed. This seems in accord with correct standards as to delegation of authority to act within proper limits prescribed by Congress. * * * Whether the delegation, assuredly proper in subject-matter and lawfully defined in scope, purpose, and manner of exercise, should have been to an executive department, was within the sound discretion of Congress. As it did not confer upon anyone functions it was bound to keep and exercise for itself, there was no failure to preserve the required separation of governmental powers. * * *" [17]

In the second case, Swayne & Hoyt, Limited,[18] the authority of the Secretary of Commerce to regulate shipping under the Shipping Act of 1916 was again challenged on the ground, among others, that the transfer of these functions from the Shipping Board to the Secretary of Commerce by Executive Order was unlawful. In sustaining the validity of the 1932 Reorganization Act, as amended, the Court said:

"The transfer of the former functions of the U.S. Shipping Board by Executive order to the Department of Commerce was, in our opinion, in all respects legal and effective to confer on the Secretary all the regulatory powers of the statute. The question is not new. Precisely the same point was urged in *Isbrandtsen-Moller Company, Inc.* v. *United States et al.* (D.C.) 14 F. Supp. 407; and the opinion of Judge Chase so fully and, as we think, satisfactorily answers it that nothing more need be said, except to refer to that case and adopt its reasoning which we do." [19]

Reference was made earlier to a discussion of the constitutionality of Reorganization Act procedures in a 1933 opinion of the Attorney General. In January 1933, Attorney General Mitchell, responding to a request from President Hoover for an opinion, held that a proviso in an appropriation act, awaiting the President's signature, was unconstitutional. The act provided, among other things, for the appropriation of funds to refund taxes illegally or erroneously collected. The proviso provided that no tax refunds in excess of $20,000 could be made until the Joint Committee on Internal Revenue Taxation had examined, approved, and fixed the amount of the proposed refund and so notified the Commissioner of Internal Revenue. The Attorney General held that a proviso authorizing a joint committee of the Congress to make the final decision as to whether such refunds of taxes shall be made and to fix the amount thereof, was obnoxious to the Constitution because it attempted to entrust to members of the legislative branch executive functions in the execution of the law, and it further attempted to give a committee of the legislative branch power to approve or disapprove Executive acts.[20]

In the course of his discussion and analysis, and by way of example of alleged congressional encroachment upon executive functions, the Attorney General discussed the provisions of the Executive Reorganization Act of 1932, enacted as title IV of the Legislative Appropriation Act for fiscal year 1933, and concluded that there was grave doubt as to its constitutionality.[21] As noted earlier, that act authorized the President, by Executive order, to consolidate, redistribute, and transfer various Government agencies and functions. It provided further for the transmittal of the President's reorganization orders to the Congress to become effective after 60 days, unless either branch of Congress, "within such 60 calendar days shall pass a resolution disapproving of such Executive order or any part thereof," in which event it "shall become null and void to the extent of such disapproval." Mr. Mitchell appeared to be particularly concerned over that portion of the act which authorized nullification of the order by resolution of either House of Congress.

In arriving at his conclusion, Attorney General Mitchell stated:

"It must be assumed that the functions of the President under this act were executive in their nature or they could not have been constitutionally conferred upon him, and so there was set up a method by which one House of Congress might disapprove Executive action. No one would question the power of Congress to provide for delay in the execution of such an administrative order, or its power to withdraw the authority to make the order, provided the withdrawal takes the form of legislation. The attempt to give to either House of Congress, by action which is not legislation, power to disapprove administrative acts, raises a grave question as to the validity of the entire provision in the act of June 30, 1932, for Executive reorganization of governmental functions." [22]

It is apparent that Attorney General Mitchell's observations concerning the validity of the Executive Reorganization Act of 1932 (title IV of the act of June 30, 1932) were nothing more than obiter dictum, since they were entirely collateral or incidental to the issue before him. His official opinion was concerned only with the constitutionality of proposed legislation dealing with tax refunds, and his objection to the reorganization provisions of the act of June 30, 1932, were stated by him merely as an example, that act having become law some 6 months prior to the issuance of his opinion. Accordingly, those remarks are in no way controlling and did not constitute either an official opinion, a precedent, or even a guide. This is further borne out by the fact that this opinion was neither cited nor referred to in the two cases referred to above, which dealt specifically with the validity of the Executive Reorganization Act of 1932, as amended by the act of March 3, 1933.

Attorney General Mitchell's remarks concerning the validity of the reorganization procedures prescribed in the 1932 act have been referred to and discussed in this memorandum, not because they are considered authoritative, but because they have been relied upon, from time to time, to support the position of those who contend that these and similar procedures provided for in subsequent reorganization acts are either unconstitutional or of doubtful validity.[23] Furthermore, during hearings by this committee on S. 526, a companion bill to H.R. 2361, ultimately enacted as the Reorganization Act of 1949,[24] the Mitchell opinion was referred to on several occasions. In addition, the question of the constitutionality of a procedure by which the Congress would be authorized to disapprove a reorganization plan by either a simple resolution of one House of Congress or a concurrent resolution of both Houses was raised and discussed.[25]

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[16] 14 F. Supp. 407 (S.D.N.Y., 1936).

[17] Id., at 412–13.

[18] 18 F. Supp. 25 (D.C. 1936).

[19] Id., at 28.

[20] 37 Ops. Atty. Gen. 56 (Jan. 24, 1933).

[21] Id., at 63–4.

[22] Ibid.

[23] H. Rept. No. 187, 82d Cong., pp. 12–17; H. Rept. No. 6, 83d Cong., pp. 13–23; H. Rept. No. 657, 85th Cong., pp. 12–13; H. Rept. No. 195, 87th Cong., pp. 13–14.

[24] Public Law 109, 81st Cong.

[25] Hearings before the Committee on Expenditures in the Executive Departments, 81st Cong., 1st sess., on S. 526, pp. 15, 26–27, and 37.

In its report on S. 1120, 79th Cong., later enacted, with amendments, as the Reorganization Act of 1945, the Senate Committee on the Judiciary, referring to the provision for disapproval by either House, stated that "Such a delegation of legislative power does not operate to deprive either House of the Congress of its constitutional right to have no change made in the law relating to the organization of the Government without the assent of at least a majority of its numbers present and voting." S. Rept. 638, 79th Cong., p. 3.

See also, Ginnane, Robert W., "The Control of Federal Administration by Congressional Resolutions and Committees," 66 Harv. L. Rev. 569, 576–82 (1953).

Following the close of the hearings, in an effort to clarify this issue, the chairman of the committee addressed a letter to Attorney General Tom C. Clark, calling his attention to the Mitchell opinion, and requesting Mr. Clark's opinion as to the constitutionality of such procedures, in view of the language contained in the Mitchell opinion casting doubt on the validity of that portion of the 1932 act which provided for disapproval of reorganization orders by simple resolution of either House. More specifically, Attorney General Clark was requested to submit his opinion on two questions: (1) Can congressional disapproval be effected constitutionally by a simple resolution of either House of the Congress? (2) Can such disapproval be effected constitutionally by a concurrent resolution of both Houses of the Congress?

The Department of Justice, after noting that the Attorney General was not authorized to furnish opinions to Members of Congress or committees thereof, submitted a memorandum, in lieu of testimony before the mittee, which was incorporated in the committee's report on S. 526.[26] Following a review of the Mitchell opinion and a statement to the effect that his remarks concerning reorganization procedures were obiter dictum, the memorandum stated:

"Attorney General Mitchell's opinion, insofar as it intimated the unconstitutionality of the reorganization provisions of the act of June 30, 1932, was based upon an unsound premise; namely, that the Congress in disapproving a reorganization plan is exercising a legislative function in a nonlegislative manner. But the Congress exercises its full legislative power when it passes a statute authorizing the President to reorganize the executive branch of the Government by means of reorganization plans. At that point the Congress decides what the policy shall be and lays down the statutory standards and limitations which shall be the framework of Executive action under the Reorganization Act. If the legislation stops there, with no provision for future reference to the Congress, the President's authority to reorganize the Government is complete. Indeed, such authority was given in full to President Roosevelt in the Reorganization Act of 1933 (47 Stat. 1517).

"The question of the legality of the delegation by the Congress of the power to the President to reorganize the executive branch of the Government has been resolved not only by previous Congresses but also by the courts. Witness the Reorganization Acts of 1933, 1938, and 1945. (See also *Isbrandsten-Moller Co.* v. *United States,* 14 F. Supp. 407 (3-Judge Dist. Ct., S.D. N.Y.), affirmed on other grounds, 300 U.S. 139; *Sayne & Hoyt* v. *United States,* 18 F. Supp. 25 (3-Judge Dist. Ct., D.C.), affirmed on other grounds, 300 U.S. 297; *Sibbach* v. *Wilson & Co.,* 312 U.S. 1, 15.)

"The pattern of the 1939 and 1945 Reorganization Acts has been to give the reorganization authority to the President, and then provide machinery whereby the Congress may approve or disapprove the plans proposed by the President. Such approval or disapproval by the Congress or either House thereof is not a legislative act. Nor is it, in the circumstances, an improper legislative encroachment upon the executive in the performance of functions delegated to him by the Congress. As indicated above, the authority given to the President to reorganize the Government is legally and adequately vested in the President when the Congress takes the initial step of passing a reorganization act.

"The question here raised relates to the reservation by the Congress of the right to disapprove action taken by the President under the statutory grant of authority. Such reservations are not unprecedented. There have been a number of occasions on which the Congress has participated in similar fashion in the administration of the laws. An example is to be found in section 19 of the Immigration Act of 1917, as amended (8 U.S.C. 155(c); Public Law 863, 80th Cong.), which requires the Attorney General to report to the Congress cases of suspension of deportation of aliens and which provides further that 'if during the session of the Congress at which a case is reported * * * the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel the deportation proceedings. * * * If prior to the close of the session of the Congress next following the session at which a case is reported, the Congress does not pass such a concurrent resolution, the Attorney General shall thereupon deport such alien * * *.' The Congress has thus reserved the opportunity to express approval or disapproval of Executive actions in a described field.

"Still other examples may be found in the laws relating to the administration by the Secretary of the Navy of the naval petroleum reserves, which require consultation by him with the Armed Services Committees of the Congress before he takes certain types of action, such as entering into certain contracts relating to those reserves, starting condemnation proceedings, etc. (34 U.S.C. 524); and in the statute which requires the Joint Committee on Printing to give its approval before an executive agency may have certain types of printing work done outside of the Government Printing Office (44 U.S.C. 111).

"It cannot be questioned that the President in carrying out his Executive functions may consult with whom he pleases. The President frequently consults with congressional leaders, for example, on matters of legislative interest—even on matters which may be considered to be strictly within the purview of the Executive, such as those relating to foreign policy. There would appear to be no reason why the Executive may not be given express statutory authority to communicate to the Congress his intention to perform a given Executive function unless the Congress by some stated means indicates its disapproval. The Reorganization Acts of 1939 and 1945 gave recognition to this principle. The President, in asking the Congress to pass the instant reorganization bill, is following the pattern established by those acts, namely by taking the position that if the Congress will delegate to him authority to reorganize the Government, he will undertake to submit all reorganization plans to the Congress and to put no such plan into effect if the Congress indicates its disapproval thereof. In this procedure there is no question involved of the Congress taking legislative action beyond its initial passage of the Reorganization Act. Nor is there any question involved of abdication by the Executive of his Executive functions to the Congress. It is merely a case where the Executive and the Congress act in cooperation for the benefit of the entire Government and the Nation.

"For the foregoing reasons, it is not believed that there is constitutional objection to the provision in section 6 of the reorganization bills which permits the Congress by concurrent resolution to express its disapproval of reorganization plans."

Summary and conclusion

Summarizing the holdings of the leading cases discussed herein, it appears that a statute which delegates authority to the President or to an executive or judicial agency will be held to be constitutional if the following requirements are met: (1) Congress must itself have jurisdiction over the subject matter; (2) the delegation must be made to a public official or agency; (3) the statute must contain a definite statement of congressional policy, clearly defining the subject and extent of the delegation; and (4) if the legislation is to take effect in the future, there must be a statement of the facts which must be found to exist before the delegation can become operative. If these requirements are met, the delegation is valid, even though the statute gives the official or agency to whom authority is delegated considerable latitude in the exercise of judgment or discretion within which to ascertain the conditions which the Congress has made prerequisite to the delegation. However, such official or instrumentality must remain within the prescribed framework, and a reservation by the Congress, to review the action taken to determine if it is within the prescribed framework and policy of the delegation, is a further safeguard to insure compliance with the congressional mandate.

An analysis of the provisions of the Reorganization Act of 1949, as amended, reveals that it appears to meet all of the requirements for valid delegations developed by the courts during the past 150 years. Applying these tests to specific provisions of the act, it will be seen that (1) Congress has authority to prescribe the organization and structure of the executive branch departments and agencies and thus has jurisdiction over the subject matter; (2) the delegation made in the act is to the President and not to private individuals or groups; (3) specific congressional policy and the various objectives sought to be accomplished by the statute are clearly set forth in section 2, which, together with sections 3, 4, and 5, define the subject and extent of the delegation; and (4) section 3 requires the necessary findings of fact and certification thereof to the Congress, before the authority delegated to the President can become operative. Finally, section 5 limits the duration of the authority delegated, and, section 6 provides for a congressional review of the action contemplated by the President, prior to its becoming effective, and enables the Congress to make certain that the atcion contemplated is within the prescribed framework and policy of the delegation.

As indicated earlier, the contention that the Reorganization Act of 1949, as amended, and its predecessor acts, are of doubtful constitutional validity has been based upon the nature and extent of the congressional delegations, and the procedure by which the Congress may reject Presidential reorganization proposals. Concerning the nature and extent of delegations, it has been shown that the U.S. Supreme Court will sustain those which meet the requirements set forth above, provided they do not amount to an abdication of its powers by the Congress.[27] In this connection, it should be noted that most of the recent delegations sustained by the Court have involved either complex regulatory matters, or wartime or other emergency legislation, which could be handled effectively only by the President or other executive branch agencies, and in which, for these reasons, the Court showed a willingness to acquiesce.[28]

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[26] S. Rept. No. 232, 81st Cong., pp. 18–20. This memorandum replied only to the question of congressional disapproval by concurrent resolution and not to the inquiry concerning simple resolutions, probably due to the fact that both the Senate and House bills as introduced, provided for disapproval by concurrent resolution.

[27] "The Congress manifestly is not permitted to abdicate or transfer to others, the essential legislative functions with which it is * * * vested." Hughes, C. J., *Panama Refining Co.* v. *Ryan,* 293 U.S. 388, 421 (1935).

[28] "Undoubtedly legislation must often be adopted to complex conditions involving a host of details with which the national legislature cannot deal directly." Hughes, C. J., *Panama Refining Co.* v. *Ryan, op. cit, supra.* See also, *Hampton* v. *United States, supra; Currin* v. *Wallace, supra; Yakus* v. *United States, supra.*

On the other hand, the delegations authorized by the reorganization acts are admittedly extremely broad in scope, delegating, as they do, to the President, a very substantial amount of authority which has been vested by the Constitution in the Congress, and which the Congress is quite capable of handling through normal legislative procedures. Furthermore, the elements of emergency and wartime requirements are absent, and delegations of great breadth and scope, which the Court was willing to sustain during periods of great national stress, as valid legislative delegations, might well be considered as legislative abdication when they involve the organization, structure, and functions of the executive branch of the Government, in the absence of a national emergency.

In an effort to give the President adequate authority to accomplish the objectives of the legislation, without abdicating its legislative authority and responsibility, the Congress, in enacting the Reorganization Act of 1949, incorporated provisions which enabled it to exercise control over the delegated authority without the consent of the individual to whom it had been delegated. This was accomplished by providing first, that the authority delegated to the President was of limited duration and not permanent, and second, a procedure whereby the Congress could disapprove reorganization proposals submitted by the President.[29]

In connection with limiting the duration of the President's reorganization authority, the Senate Committee on Expenditures in the executive departments, predecessor of the Committee on Government Operations, at whose insistence this provision was added, explained its action in its report to the Senate, as follows:

"The House bill contained the administration's recommendation relative to eliminating time limitations included in previous acts; granting reorganization authority to the President on a permanent basis. The general consensus of witnesses appearing before this committee relative to this provision of the pending bills was that the 2-year limitation included in prior acts did not permit sufficient time for the President to prepare reorganization plans and submit them to Congress for action.

"This committee agreed with the latter point of view, but was of the opinion that Congress should retain some control which would permit periodical examinations of the authority, with a view to determining its effectiveness through reports from the President relative to reorganizations effected thereunder and savings and efficiency attained through such reorganizations, so that the basic authority might be either extended or restricted, as may be required to meet the then existing circumstances. To assure such review by Congress an amendment was adopted to provide for the expiration of the act as of April 1, 1953." [30]

It may be of interest to note, in connection with the above statement, that since the enactment of the Reorganization Act of 1949, the Committee on Government Operations, as well as its predecessor, the Committee on Expenditures in the Executive Departments, has taken the position that the Congress should neither surrender nor abdicate its legislative authority over matters of such significance, on a permanent basis.

In its report to the Senate in the 86th Congress the committee stated that it was "* * * the consensus of the committee that the present Congress should not commit succeeding Congresses to the provisions of the Reorganization Act, but that each Congress should have the right to extend this authority to the President or to withdraw it as the necessity dictates at the time." [31]

As a matter of further interest, it may be noted that the position of this committee, as adopted by the Congress, was completely in accord with prior congressional action and precedent, since, with the exception of the initial act, the act of June 30, 1932, every subsequent reorganization act has granted reorganization authority to the President for a limited period of time. Although the 1932 act granted permanent authority, it was amended and superseded by the acts of March 3, 1933, and March 20, 1933, which limited the President's authority under the act to a period of 2 years.

With respect to disapproval procedures provided for by the Reorganization Act, the contention that the procedure which authorizes disapproval of a reorganization plan by one House of the Congress is of doubtful constitutionality, because it authorizes the Congress to legislate in a maner not provided for in the Constitution, appears to be without merit. When the Congress enacts the statute which authorizes the President to reorganize the executive branch of the Government, it has exercised its full legislative powers and the legislative process is complete. The subsequent actions required by the statute, including Presidential findings of fact, certification and submission to the Congress, are simply part of a conditional delegation of authority, designed to enable the Congress to determine whether the President is exercising his delegated authority within the terms of the delegation and in conformity with the congressional purpose.[32]

In closing, it should be noted that the purpose of this memorandum was to determine the constitutionality of the Reorganization Act of 1949, as amended, in the light of existing cases. Since that act provides for a delegation of reorganization authority by the Congress to the President of limited duration and for a fixed term, the conclusions arrived at in the foregoing discussion are not necessarily determinative or applicable to legislation which would grant such authority on a permanent basis. Furthermore, in the only two court decisions which dealt with the validity of delegations under a reorganization act and upheld such delegations, the authorizing legislation limited the President's authority to submit reorganization proposals to a period of 2 years.[33]

In view of the foregoing discussion, the delegation by the Congress to the President of the authority to reorganize departments and agencies of the Federal Government containing the safeguards now provided for in the Reorganization Act of 1949, as amended, is a valid delegation and does not violate the constitutional prohibitions against the delegation of legislative power.

ELI E. NOBLEMAN,
Professional Staff Member.

Approved:

WALTER L. REYNOLDS,
Chief Clerk and Staff Director.

[29] Public Law 109, 81st Cong., secs. 5(b) and 6(a).

[30] S. Rept. No. 232, 81st Cong., p. 17.

[31] S. Rept. No. 239, 86th Cong., p. 2.

[32] See remarks of the Senate Committee on the Judiciary in S. Rept. No. 638, 79th Cong., quoted supra, note 25.

[33] See cases cited supra, note 15. See also act of June 30, 1932 (47 Stat. 413), as amended and superseded by the act of Mar. 3, 1933 (47 Stat. 1517), as amended by the act of Mar. 20, 1933 (48 Stat. 16).

PROPOSED COMMISSION ON SCIENCE AND TECHNOLOGY

Mr. McCLELLAN. Mr. President, on behalf of myself as chairman of the Committee on Government Operations and of Senators MUNDT, RIBICOFF, GRUENING, and YARBOROUGH, I introduce, for appropriate reference, a bill proposing the establishment of a Commission on Science and Technology.

This proposed legislation was perfected after 8 years of study by the committee and its subcommittees in an effort to strengthen Federal programs in the fields of science and technology, and to effect necessary Federal reorganizations to eliminate duplication and overlapping between Government departments and agencies engaged in scientific and technological research.

The bill is the result of three separate hearings before the committee, beginning in 1958. In 1959 a somewhat similar bill was reported to the Senate. Further hearings were held on a revised bill, S. 2771, in the 87th Congress, in May and July 1962. These hearings reflected that there has been a steady and relentless increase in the cost of research and development programs of the Federal departments and agencies, amounting to $10 billion in fiscal year 1962, exceeded $12 billion in fiscal year 1963, or more than the entire expenditures of the Federal Government prior to World War II, and in excess of $15 billion for fiscal year 1964.

Mr. President, this bill provides for the establishment of a Hoover-type commission composed of representatives from the legislative and executive branches of the Government and of persons from private life who are eminent in one or more fields of science or engineering, or who are qualified and experienced in policy determination and administration of industrial scientific research and technological activities.

The objectives of the proposed Commission, which are set forth in detail in the report filed in the 87th and 88th Congresses—Senate Reports Nos. 1828 and 16, respectively—provide for a study of all of the programs, methods, and procedures of the Federal departments and agencies which are operating, conducting, and financing scientific programs, with the objective of bringing about more economy and efficiency in the performance of these essential activities and functions. Deficiencies in some of these programs and the problems relating thereto have been outlined on numerous occasions before various committees of the Congress by informed authorities, who have stressed the urgent need for improvement in effecting necessary reorganizations and better coordination of existing programs. Emphasis has also been directed toward the need for developing a program for the elimination of duplication in science efforts, where one agency of Government works on programs which are underway in other agencies, or where research is being done on problems which have already been solved by other scientists. There is reason to believe that this occurs extensively, due primarily to serious deficiencies in the science information retrieval programs of the Federal Government.

The Commission, if established, would be specifically directed to study and recommend ways and means of meeting our

scientific manpower needs, which President Kennedy described as one of the most critical problems facing our Nation. There are probably many other critical needs which need study and exploration, even beyond those included in the objectives of the proposed legislation.

In undertaking its studies the Commission would be vested with authority to set up a Science Advisory Panel of outstanding science, engineering, and technological authorities from all sections of the Nation to assist it in the performance of the functions outlined in the bill. The Commission would be further directed to conduct a study of Federal scientific and technical activities, such as the deficiencies in scientific engineering, and technical information programs, including acquisition, processing, documentation, storage, retrieval, and distribution of scientific information, the promotion of programs for the economic and efficient operation and utilization of automatic data processing equipment by Federal departments and agencies and by defense, research, and development contractors; the urgency for accelerating scientific, engineering, and technical progress in a number of Federal agencies which perform some functions in these areas; and to recommend necessary reorganizations of scientific and technological activities of the Federal Government to improve their operations and to better coordinate their activities.

Witnesses at the hearings held in previous Congresses suggested that a panel of experts in the fields of science and technology should be set up to serve the committees of Congress which deal with those problems. The enactment of the pending bill, and the establishment of the Science Advisory Panel provided for therein would enable the Congress to continue to call upon the experts named to such a panel after the proposed Commission has completed its work and submitted its report and recommendations.

One of the basic objectives of the bill is to provide a medium through which individual Members and committees of the Congress can obtain information which is not now available to enable them to take appropriate legislative action to establish definite Federal policies in the field of science and technology. The reports and recommendations of the Commission will also provide a basis for an evaluation of programs which are presently in operation as well as those which are being proposed.

Evidence was also submitted at the hearings on S. 2771 in the 87th Congress which indicated that the Bureau of the Budget has reported that a detailed evaluation of existing science and technological operations of the numerous agencies operating in these fields has been found to be too difficult. The result has been that the agencies interested in procuring appropriated funds are not required to submit an evaluation of achievement under existing programs, but merely attempt to justify further appropriations of funds. Under this procedure, it was pointed out that Congress is required to appropriate funds on faith alone, since the appropriate committees and individual Members of Congress have no information which would permit them to evaluate the programs or to take the necessary action to eliminate excessive duplication and waste.

Should the Congress enact the bill into law, it will be provided with a means of obtaining information upon which it can develop facts, thus enabling it to perform its normal constitutional functions. The Committee on Government Operations is firmly convinced that there is a real need for a bipartisan Commission to study all of the science and technological programs of the Federal Government as proposed by this bill. It is further convinced that its enactment will insure maximum utilization of the resources of private industry and nonprofit research organizations, including universities and other educational or technological institutions, in the formulation of a properly coordinated program with the maximum utilization of the resources of private industry, nonprofit, and other technological institutions at a reduced cost.

The committee in recommending this legislation in past Congresses considered it to be an essential first step in achieving these objectives so that the Congress and the President may have the benefit of the recommendation of qualified experts in the fields of science, engineering, and technology upon which appropriate legislative action may be taken to promote more efficiency in the operation of these programs and to effect economies that are essential in conserving Federal funds and technological manpower. Further, the bill specifically provides that the Commission shall make an assessment of how the executive and legislative branches can more effectively achieve common objectives in the legislative process.

Dr. Jerome B. Wiesner, Director, Office of Science and Technology, appeared before the Military Operations Subcommittee of the House Committee on Government Operations on July 31, 1962, approximately 7 weeks after reorganization plan No. 2 of 1962, creating that Office became effective, in connection with the subcommittee's inquiry into Government contracting for research and development. The following are extracts from Dr. Wiesner's testimony:

> There has been concern, first as to whether a Department of Science was needed to centralize science programs and operations that are now integrated in various departments and agencies, perhaps by combining National Science Foundation, Atomic Energy Commission, National Aeronautics and Space Administration, National Bureau of Standards, and so forth; and second, concern expressed in these studies as to whether staff resources in the Office of the President were adequate to meet his needs.
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> * * * * *
>
> As I have said many people believe that the present system is inevitably evolving toward a Department of Science. However, I don't believe that a single Department of Science with the responsibility for all of the scientific activities of the Federal Government would be a workable arrangement because most of the scientific activities of the individual agencies are carried out in support of their specific missions. If, as has been proposed, a less comprehensive Department of Science were created—by consolidation of the Atomic Energy Commission, National Science Foundation, National Bureau of Standards, and other agencies I talked about earlier—their operations might be made more effective. There would still be need, however, to coordinate and integrate their activities with that of the mission-oriented agencies having related scientific and technical programs. In other words, the OST is neither a substitute for nor in competition with a Federal Department of Science.

This statement by Dr. Weisner is in accord with the views expressed repeatedly by this committee and conforms to the objectives set forth in the bill I am introducing today. The committee has always taken the view that a comprehensive study must be made by a commission composed of qualified persons who are familiar with the problems relating to the operation and support of science and technological programs by the Federal Government. The committee has also repeatedly pointed out that such a study is vital in order to determine whether there is a need for a Department of Science and Technology. Also that, if such a department is necessary, to recommend what Federal activities should be incorporated therein, and a determination made as to those which would better perform their allocated tasks as independent agencies or as components identified as an important function related to the mission of existing departments. These are among the major objectives of the proposal which I am submitting to the Senate today.

The continued safety and growth of our Nation is the prime concern of the committee in reporting S. 2771 and its passage in the Senate in the 87th Congress, and S. 816 in the 88th Congress, and of the sponsors of the subject bill in the 89th Congress. This bill is being introduced with the sincere hope that it will be enacted into law in the present Congress so that improved programs in science and technology may be developed which will assist us, as a nation, to meet the challenge of world communism.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 1136) for the establishment of a Commission on Science and Technology, introduced by Mr. McCLELLAN (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Government Operations.

AID TO CERTAIN GOVERNMENT EMPLOYEES AFFECTED BY CLOSING OF FEDERAL INSTALLATIONS

Mr. JAVITS. Mr. President, on behalf of myself and my colleague from New York [Mr. KENNEDY], and the Senator from Pennsylvania [Mr. CLARK], the Senator from Michigan [Mr. HART], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Maine [Mr. MUSKIE], the Senator from New Hampshire [Mr. McINTYRE], the Senator from Connecticut [Mr. RIBICOFF], and the Senator from Texas [Mr. TOWER], I send to the desk a bill, for appropriate reference, to aid Government employees

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE

(For information only; should not be quoted or cited)

UNITED STATES DEPARTMENT OF AGRICULTURE
Washington, D. C. 20250
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HIGHLIGHTS: House passed Appalachia bill. House subcommittee voted to report acreage-poundage tobacco bill. House subcommittee voted to report bill to extend Reorganization Act. Rep. Findley criticized proposed user charge on SCS technical assistance. Rep. Cooley introduced and discussed acreage-poundage tobacco bill.

HOUSE

1. APPALACHIA. By a vote of 257 to 165, passed without amendment S. 3, to provide public works and economic development programs and the planning and coordination needed to assist in the development of the Appalachian region (pp. 3897-3931, A922-3). This bill will now be sent to the President. See Digests 20 and 21 for a summary of items of interest.

Rejected the following amendments:

By Rep. Cleveland, 56 to 132, to strike out Sec. 203, providing for land stabilization, conservation, and erosion control activities in the region. pp. 3900-03

By Rep. Cramer, to provide that no assistance shall be given to any landowner whose average annual income exceeds $3,000. pp. 3903-4
By Rep. Michel, to provide that the Secretary of the Interior shall make a report on the strip and surface mining survey of the region by July 1, 1966, rather than July 1, 1967. pp. 3905-12
By Rep. Cramer, to strike out Sec. 214 providing for supplements to Federal grant-in-aid programs in the region. pp. 3912-3
By Rep. Daddario, 91 to 151, to provide that Federal agencies having responsibilities under the bill shall adhere to the statement of Government Patent Policy issued by President Kennedy Oct. 10, 1963. pp. 3913-19
By Rep. Balwin, 65 to 172, to provide that no grants may be made for projects in the region unless the area qualifies as an "eligible area" under Sec. 3 (a) of the Public Works Acceleration Act. pp. 3921-2
By Rep. McEwen, to specify the counties in southern N. Y. which would be eligible for assistance under the bill. pp. 3922-4
By a vote of 100 to 323, rejected a motion by Rep. Cramer to recommit the bill to the Public Works Committee with instructions to substitute the text of H. R. 4466, to extend the proposed program to other economically depressed areas throughout the U. S. pp. 3939-30

2. TOBACCO. The Tobacco Subcommittee of the Agriculture Committee voted to report to the full committee a bill to provide for acreage-poundage marketing quotas for tobacco. The "Daily Digest" states that a clean bill is to be introduced (see bill introduced by Rep. Cooley at end of this Digest). p. D151

3. REORGANIZATION. The Executive and Legislative Reorganization Subcommittee of the Government Operations Committee voted to report to the full committee H. R. 4623, to extend and amend the Reorganization Act of 1949. p. D152

4. INTER-AMERICAN DEVELOPMENT BANK. Received the conference report on H. R. 45, to authorize $750 million for U. S. participation in the Fund for Special Operations of the Inter-American Development Bank (H. Rept. 137). p. 3931

5. FARM LABOR. Rep. Teague inserted a resolution of the California Republican delegation urging the President and the Secretary of Labor "to utilize Public Law 414 and to immediately certify the admission of sufficient temporary, supplemental farm workers" into Calif. p. 3834

6. FARM LEGISLATION. Rep. Younger inserted a speech by the legislation chairman, National Federation of Republican Women, critical of recent legislation passed by Congress, including farm legislation. pp. 3952-4

7. SOIL CONSERVATION; USER CHARGES. Rep. Findley criticized the proposed user charge on SCS technical assistance to farmers and ranchers and inserted a letter from a local soil conservation district critical of the proposal. pp. 3948-9

8. POVERTY. Rep. Gonzalez expressed concern over poverty in the Southwest and urged that action be taken to assist the area. p. 3956

9. RESEARCH. Rep. Roush criticized the "heavy concentration of Federal research funds in a very few areas of the country." p. 3895

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE

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HIGHLIGHTS: House committee reported bill to extend Reorganization Act. Rep. Matthews criticized proposed user charge on SCS technical assistance. Rep. Nelsen urged action to increase farm income. Rep. Talcott criticized farm labor situation. Sen. Curtis stated Appalachian land improvement program is threat to cattle industry. Sen. Magnuson introduced and discussed bill to extend time for report by National Commission on Food Marketing.

HOUSE

1. REORGANIZATION. The Government Operations Committee reported without amendment H. R. 4623, to extend permanently the Reorganization Act of 1949 (H. Rept. 184). p. 5175

2. PATENTS; USER CHARGES. Passed without amendment H. R. 4185, to increase fees payable to the Patent Office so that a reasonable part of Patent Office costs may be recovered, and to provide that the payment of fees shall be applicable to other Federal agencies. pp. 5117, 5118-25

3. BILLIE SOL ESTES. The "Daily Digest" states that the Government Operations Committee approved a subcommittee report on the operations of Billie Sol Estes. pp. D200-01

4. USER CHARGES; SOIL CONSERVATION. Rep. Matthews commended the work of the Soil Conservation Service and expressed opposition to the proposed user charge on SCS technical assistance to farmers and ranchers. pp. 5139-40

5. FARM INCOME. Rep. Nelsen expressed concern over the economic status of the family farmer, stated that farm income must be brought up to keep pace with increased farm production costs, and inserted several items on the matter. pp. 5140-2

6. FARM LABOR. Rep. Talcott stated that there was a shortage of farm labor in Calif. and urged that a meeting be called of interested representative parties to "develop a solution to end the chaos and waste in California farms, industries, and towns." pp. 5142-3

7. AIR POLLUTION. Rep. Dent inserted several items discussing the causes and effects of air pollution. pp. 5166-7

8. FORESTRY; PERSONNEL. Received from this Department a proposed bill to validate certain over-payments made by the Forest Service to Southwestern Indian firefighter crews from N. Mex. and Ariz.; to Judiciary Committee. p. 5175

9. BUDGETING. Received from this Department "a report on a violation resulting from overobligation of an administratively subdivided apportionment in the Forest Service." p. 5175

10. ECONOMIC REPORT. Received the report of the Joint Economic Committee, 1965 (H. Rept. 175). p. 5175

11. WEATHER. Received a report of the Government Operations Committee on Government weather programs (H. Rept. 177). p. 5175

12. ACCOUNTING. Received from the Government Operations Committee, "Third report on submissions of agency accounting systems for GAO approval" (H. Rept. 179). p. 5175

13. COMMITTEE ASSIGNMENTS. The Banking and Currency Committee announced appointments to the following subcommittees: p. D200
    - Housing: Reps. Barrett (chairman), Sullivan, Ashley, Moorhead, Stephens, St. Germain, Gonzelez, Reuss, Widnall, Fino, Dwyer, and Harvey (Mich).
    - Consumer Affairs: Reps. Sullivan (chairman), Stephens, Gonzalez, Minish, Hanna, Grabowski, Todd, Annunzio, Dwyer, Fino, Halpern, and Stanton.
    - International Trade: Reps. Ashley (chairman), St. Germain, Weltner, Tettys, Cabell, McGrath, Hansen (Iowa), Halpern, Talcott, Johnson (Pa.), and Mize.

14. FOREIGN CURRENCY. The Government Operations Committee approved a subcommittee report, "U. S.-Owned Foreign Currency." p. D201

89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 184

FURTHER AMENDING THE REORGANIZATION ACT OF 1949

MARCH 17, 1965.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 4623]

The Committee on Government Operations, to whom was referred the bill (H.R. 4623) further amending the Reorganization Act of 1949, as amended, to eliminate the expiration date for the authority of the President to submit reorganization plans to the Congress, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

H.R. 4623 was introduced by the chairman of the Committee on Government Operations at the request of the President to eliminate the expiration date of (and thereby make permanent) the authority provided in the Reorganization Act of 1949 for the President to transmit to the Congress reorganization plans. Such plans take effect unless a resolution of disapproval is passed by either the House or the Senate within 60 days from the date of transmittal. The current authority will expire on June 1, 1965.

Subsection (b) of section 5 of the act as passed in 1949 (Public Law 109 of the 81st Cong., see text in appendix) reads as follows:

> (b) No provision contained in a reorganization plan shall take effect unless the plan is transmitted to the Congress before April 1, 1953.

Since then, the authority has been extended by the Congress for varying periods of approximately 2 years' duration with occasions when no authority existed at all. This subsection will be repealed by the instant bill, leaving no time limitations on the President's authority. No other substantive changes of any kind in the Reorganization Act, as amended, are being here made. The designation

(a) of section 5 becomes unnecessary with the deletion of subsection (b); therefore, the designation (a) will be eliminated. This affects only the enumeration of subsections and not the language of subsection (a).

COMMUNICATION FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A DRAFT OF PROPOSED LEGISLATION ENTITLED "A BILL TO FURTHER AMEND SECTION 5 OF THE REORGANIZATION ACT OF 1949"

THE WHITE HOUSE,
Washington, February 3, 1965.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: In my recent budget message I stated that "I will ask that permanent reorganization authority be granted to the President to initiate improvements in Government organization, subject to the disapproval of the Congress."

Accordingly, there is forwarded herewith a draft of legislation to further amend section 5 of the Reorganization Act of 1949. The bill would eliminate the expiration date for the authority to transmit reorganization plans to the Congress under the act.

Under section 2(a) of the Reorganization Act of 1949, the President has a duty to "examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary * * *." This responsibility under the statute is permanent. However, the authority to transmit reorganization plans to effect changes in the Government's structure has been limited to specified periods. The Congress has periodically extended that authority and last year renewed it until June 1, 1965.

With only a few lapses since 1932, authority generally similar to that conferred by the present Reorganization Act has been available to the Presidents then in office. The usefulness of the authority to transmit reorganization plans to the Congress and the continuing need for such authority to carry out fully the purposes of the Reorganization Act have been clearly demonstrated. The time has now come, therefore, to eliminate any expiration date with respect to that authority; the authority should be made commensurate with the responsibility of the President under the same statute.

From this authority will come benefits for the people whose government this is.

The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.

Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to

its citizens to administer their business with dispatch, enthusiasm, and effectiveness.

The Congress itself recognizes these ideals, and has many times approved the ideas and hopes of this request. It is in that spirit of the Congress I respectfully urge the Congress to an early and favorable consideration of the proposed legislation.

Sincerely,

LYNDON B. JOHNSON.

A BILL To further amend section 5 of the Reorganization Act of 1949

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That section 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended, is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

BACKGROUND

The Reorganization Act of 1949 places upon the President the duty of periodically examining and reexamining all agencies of the Government and determining what changes are necessary to accomplish the following purposes of the act:

(1) To promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;

(2) To reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;

(3) To increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) To group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) To eliminate overlapping and duplication of effort.

It also makes a declaration by the Congress that the public interest demands that the above-stated purposes be carried out; that these purposes may be accomplished in great measure by utilizing the provisions of the act; and by proceeding in this manner these purposes can be carried out more speedily than by the enactment of specific legislation.

The authority granted under the Reorganization Act of 1949 to submit reorganization plans to the Congress has been given to the President in various forms since 1932. It is based on a demonstrated need that reorganization of the many departments, agencies, and bureaus of the executive branch must be made from time to time so that Government may carry out its purposes in an efficient and economical way. The act provides a tool whereby the President, with the approval of the Congress, may make such reorganizations as are warranted to achieve this desirable objective.

This committee, in reporting the 1949 act, stated:

> * * * there is an ever-present need for making such change in the organization of executive agencies as will make the executive branch of the Government more manageable, promote better coordination in the development and execution of Government programs by removing sources of confusing and conflicting policies, minimize the confusion encountered by a citizen in dealing with scattered and overlapping agencies and facilitate the conduct of his business with the Government, and otherwise promote efficiency and economy. For the last half a century one President after another has called the attention of the Congress to the need for reorganizing the executive branch. This need has increased as the role of the Government has been enlarged and as the number and size of Government programs and agencies have been correspondingly increased. Unanimity of opinion appears to have existed for many years that corrective measures with respect to executive organization are needed.

Many reorganization plans have been put into effect since that time but none of these could be expected to provide a final and permanent arrangement for any agency. Functions change, new methods are developed, bureaucratic structures become obsolete, new laws are passed. Close attention must always be paid to organization.

The Reorganization Act of 1949 was more comprehensive than previous legislation and was recommended strongly by the first Hoover Commission on Organization of the Executive Branch of the Government which was still in existence at the time the bill was considered by the Congress.

The act and its predecessors admittedly reverse the usual legislative process by allowing the President to submit plans for reorganization which go into effect unless disapproved by the Congress within 60 days. This once unique method of legislating has become more and more used by the Congress in recent years in fields other than reorganization.[1] But this method is peculiarly useful in Government reorganization as the Congress has continually agreed. In its 1949 report, our committee also stated:

> * * * experience has demonstrated that substantial progress in reorganizing the executive branch can come about only under general authorizing legislation enacted by the Congress. The Congress, of course, has made and will make selected changes in the organization of the executive branch; but, as many Members of the Congress have stated, it is not feasible to enact far-reaching changes in organization permeating widely through the executive branch by means of direct legislation affecting specific agencies.

We include in this report a chart showing actions by this committee, by the House and the Senate on reorganization plans submitted by the President in 1961, 1962, and 1963. No plans were submitted in 1964.

[1] See Congressional Record for Apr. 9, 1963, p. 5590, for a list of provisions of Federal law relating to programs or activities which became effective if not disapproved or rejected by the Congress within a prescribed time.

Action by the Committees on Government Operations, the House, and the Senate

ACTION ON 1961 REORGANIZATION PLANS

Plan	Disapproval resolutions	Agency	Date of message	60th day	Reported by House committee	Date and action of House	Vote on disapproval resolutions	Date and action of Senate	Plan became effective
No. 1	H. Res. 302	Securities and Exchange Commission.	Apr. 27	June 27	June 12 (H. Rept. 509)	Approved [1] June 15	176 yeas; 212 nays	Vetoed June 21	
No. 2	H. Res. 303	Federal Communications Commission.	do	do	June 1 (H. Rept. 446)	Vetoed [1] June 15	323 yeas; 77 nays	None	
No. 3	H. Res. 304	Civil Aeronauties Board	May 3	July 3	June 12 (H. Rept. 510)	Approved June 20	178 yeas; 213 nays	Approved June 29	July 3, 1961
No. 4	H. Res. 305	Federal Trade Commission	May 9	July 9	June 12 (H. Rept. 511)	do	172 yeas; 221 nays	do	July 8, 1961
No. 5	H. Res. 328	National Labor Relations Board	May 24	July 23	June 26 (H. Rept. 576)	Vetoed July 20	231 yeas; 179 nays	None	
No. 6	H. Res. 335	Home Loan Bank Board	June 12	Aug. 12	None	Discharge resolution defeated. Plan approved Aug. 3.	Voice vote	Approved Aug. 3	Aug. 11, 1961
No. 7	H. Res. 336	Maritime functions	do	do	do	Discharge resolution defeated. Plan approved July 20.	184 yeas; 218 nays	Approved Aug. 10	Do.

ACTION ON 1962 REORGANIZATION PLANS

No. 1	H. Res. 530	Department of Urban Affairs	Jan. 30	Apr. 1	Feb. 15 (H. Rept. 1360).	Vetoed Feb. 12	264 yeas; 150 nays	Motion to discharge failed.	
No. 2	H. Res. 595	Office of Science and Technology	Mar. 29	June 8	Apr. 19 (H. Rept. 1635).	Approved May 16	Voice vote	None	June 8, 1962

ACTION ON 1963 REORGANIZATION PLANS

No. 1	H. Res. 372	Franklin D. Roosevelt Library and General Services Administration.	May 27	July 27	June 19 (H. Rept. 422).	None	None	None	July 27, 1963

[1] Legislation enacted along same lines. See Public Law 87-192 and Public Law 87-592.

GENERAL STATEMENT

The objectives of the Reorganization Act and the procedural variation that it provides have been repeatedly endorsed by the Congress. The act has stood the test of time and has proved its value. Changes, however, have been made since 1949. When originally enacted in that year, the act contained a provision that required a constitutional (authorized) majority of all Members of either House or Senate to veto a plan. In 1957 this was changed to a simple majority of either House, making it easier for Congress to reject a plan it did not favor. In 1963 the bill was amended to prevent the creation of new departments by reorganization plan.

It is now proposed to correct a glaring defect in the legislation by making permanent the authority given to the President for 2-year periods. The extensions heretofore granted have been neither even nor always predictable. There have been periods when no authority was available. This has had a bad effect on Presidential planning for executive reorganizations and on the timing of the submission of reorganization plans. From June 1, 1959, to April 7, 1961, the authority to submit plans lapsed due to inaction by the Congress. Likewise, from June 1, 1963, to July 2, 1964, no authority was available for the same reason. It must be said here, however, that this fault does not lie with the House inasmuch as this body has always been diligent about the timely extensions of the act.

By recommending that the authority contained in the Reorganization Act be made permanent, the committee reiterates its recognition of the significant reorganizations and consequent economies that have resulted from the use of the act and its faith that this tool will prove useful and beneficial to our present President and to future Presidents in the difficult task of coordination and systematization of our gigantic executive branch.

The permanent extension of authority will by no means diminish this committee's vigor in carefully scrutinizing all reorganization plans. The committee has recommended the rejection of plans that it believed were defective in the terms in which they were drawn and others that it believed would not achieve the objectives of the Reorganization Act. In many instances the committee has requested the opinion of other committees of the House where the agencies concerned fell within their jurisdiction but, of course, always reserving the right to make our own final judgment on a plan. On at least one occasion we rejected a plan, rewrote it as legislation, and obtained its passage by the Congress. In all, the system developed under the Reorganization Act has worked out very well and the prerogatives of the Congress have been carefully preserved.

It should be noted that since 1957, reorganization plans may be defeated by a simple majority of the Members present and voting in either House. This change, for practical purposes, rendered unnecessary the time limitation which was put in the act when a constitutional majority of either House was required to defeat a plan. The effect of the time limitation was to allow a simple majority of either House, by refusing to extend the act, to make it impossible for the President to submit any plans. Under the law as it now exists, when a simple majority may defeat all plans sent to the Congress, the danger of executive domination has been practically eliminated.

Of course, the existence of the Reorganization Act of 1949 does not and has not foreclosed the Congress from taking the course of direct legislation in any aspect of governmental reorganization. A study made by our Subcommittee on Executive and Legislative Reorganization lists the reorganizations by plan and those by statute from 1945 through 1962. It shows that during that period Congress enacted 153 statutes each of which, in a greater or less degree, resulted in a measure of executive reorganization, while the Presidents during the same period submitted 74 reorganization plans of which 52 became law.[2]

STATEMENT OF HAROLD SEIDMAN, ASSISTANT DIRECTOR FOR MANAGEMENT AND ORGANIZATION, BUREAU OF THE BUDGET

Mr. Chairman and members of the committee, I welcome this opportunity to appear before your subcommittee in support of H.R. 4623, a bill further amending the Reorganization Act of 1949.

As President Johnson stated in his recent budget message to the Congress: "We have neither the resources nor the right to saddle our people with unproductive and inefficient Government organization services and practices. * * * We must reorganize and modernize the structure of the executive branch in order to focus responsibilities and increase efficiency." The President has also emphasized that we must bring "the public service to the highest state of readiness."

To assist him in achieving this objective, the President has recommended that his authority to transmit reorganization plans under the Reorganization Act of 1949 be made commensurate with his responsibilities under the act. Under section 2(a) of the Reorganization Act of 1949, the President has a permanent duty to "examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary * * *." However, his authority under the same act to transmit reorganization plans to effect changes in the Government's structure has, in the past, been limited to short periods of about 2 to 4 years. Under the present law, his authority will expire on June 1, 1965. Pursuant to the President's requests, H.R. 4623 would amend the Reorganization Act of 1949 by repealing section 5(b) and thereby eliminating the expiration date for the authority to transmit reorganization plans under the act.

As early as 1949, President Truman asked Congress for a permanent grant of authority to transmit reorganization plans. As President Truman indicated in a message to the Congress in 1949: "The improving of the Government is a continuing and never-ending process. Government is a dynamic institution. Its administrative structure cannot be static. As new programs are established and old programs change in character and scope to meet the needs of the Nation, the organization of the executive branch must be

[2] See committee print "Reorganization by Plan and by Statute, 1945–62."

adjusted to its changing tasks." Every subsequent President has asked Congress to extend the reorganization authority.

The first Hoover Commission on the Organization of the Executive Branch also recognized the need for permanent reorganization authority, stating that "the power of the President to prepare and transmit plans of reorganization to the Congress should not be restricted by limitations and exemptions."

Since 1949, scientific and technological progress have accelerated the pace of change. New problems have arisen and President Truman's observations are even more relevant now. The Government needs organizational flexibility to cope with problems which may require new organizational solutions, and reorganization authority will help to achieve those solutions. However, unless legislation such as H.R. 4623 is enacted, the President and the Congress, after the end of May of this year, will not be able to utilize the reorganization plan procedure which has proved its effectiveness in achieving timely improvements in the organization of the executive branch.

Over 30 years of experience with some sort of Presidential reorganization authority indicates that it is required on a continuing and permanent basis. The need for this authority will continue to be great. It is one of the essential means of insuring that the executive branch of the Government can be organized to discharge effectively and efficiently its responsibilities.

As President Johnson stated in his letter to the Speaker of the House of Representatives:

"The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.

"Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm, and effectiveness.

"The Congress itself recognizes these ideals, and has many times approved the ideas and hopes of this request."

The Reorganization Act authorizes a simplified procedure for improving the structure and management of the executive branch. Under this procedure, a reorganization plan providing for the reorganization of executive agencies and transmitted to the Congress by the President takes effect after 60 days of continuous session of Congress (as defined in the act) unless either House of Congress passes a resolution of disapproval during the 60-day period. This procedure enables the President, as the responsible head of the executive branch, to initiate improvements in executive organization, and it reserves to the Congress effective powers of review and disapproval.

The Reorganization Act of 1949, as amended, contains two titles. Title I sets forth the responsibility of the President for preparing the reorganization plans, states certain requirements and limitations controlling the contents of the plans, and provides the procedure for their taking effect. Title II consists entirely of the special rules of the Congress governing the expeditious handling of reorganization plans by the Congress.

Section 2(a) of the act states the six purposes of the reorganization procedure:

> "(1) to promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;
>
> "(2) to reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;
>
> "(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;
>
> "(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;
>
> "(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and
>
> "(6) to eliminate overlapping and duplication of effort."

The desirability of these objectives is obvious. Subsection (b) of section 2 states:

"(b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding under the provisions of this Act, and can be accomplished more speedily thereby than by the enactment of specific legislation."

Accordingly, section 2 not only sets forth the objectives to be sought by the Reorganization Act but points out that they can be accomplished, and accomplished more speedily under the reorganization plan procedure.

The Reorganization Act specifically authorizes the undertaking of five basic types of "reorganizations" by reorganization plan. Those are: (1) transfer, (2) consolidation, (3) coordination, or (4) abolition of the whole or any part of any agency or of the functions of any agency, and (5) the authorization of any officer to delegate any of his functions. "Agency" is defined to mean "any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government," and any and all parts of the government of the District of Columbia except the courts.

The Reorganization Act has become a well-accepted and proven tool for helping to keep the executive branch well organized to meet its current needs and for attacking the problems of ineffectiveness, inefficiency, or uneconomical operations of Government. It affords a useful, expeditious, and successful procedure by which the President may present, and the Congress may review, proposals for the reorganization of agencies and activities of the executive branch of the Government.

The cooperative executive-legislative approach authorized in the Reorganization Act was adopted after long experience had demonstrated that improvements in organization were difficult to achieve when the sole way of correcting defects was to rely upon the passage of specific legislation. Improvements were long delayed and often overdue when a reorganization contained in a bill had to pursue its course through the legislative machinery and compete for attention with urgent substantive legislation. The Reorganization Act permits an alternative, or supplemental, way of approaching this problem, and it does so by clearly placing the responsibility for initiating improvements upon the President. In addition, it is an approach which provides ample safeguards for the rights of anyone who wishes to be heard for or against any particular proposed change.

The provisions of the present Reorganization Act have been developed over the past 33 years. The first statute was undoubtedly experimental; successive and successful improvements have been made since then. Presidential initiation of organizational improvements subject to congressional review was authorized by the Economy Act of 1932. Under that act, the President could provide for certain reorganizations of executive agencies by Executive orders which had to lie before the Congress for 60 days subject to disapproval by a simple majority of either House of the Congress.

In the Economy Act of 1933 changes were made to strengthen the procedure. It provided that Presidential orders making reorganizations would automatically take effect after lying before the Congress for 60 days. The Congress could prevent such an order from taking effect only by enacting specific legislation. The reorganization provisions of the Economy Act of 1933 remained in effect until March 19, 1935, during which time 8 principal and over 15 subsidiary orders took effect and none was disapproved.

This cooperative executive-legislative approach to reorganization was revived with the enactment of the Reorganization Act of 1939. That act authorized reorganization plans as we know them today.

Reorganization plans, prepared by the President, were transmitted to the Congress and became effective after 60 days unless disapproved by a concurrent resolution passed by both Houses of the Congress. Five major reorganization plans were transmitted in 1939 and 1940 and all took effect.

During World War II, emergency powers were vested in the President to make wartime reorganizations by Executive

order without congressional review. But after the war, the Congress enacted the Reorganization Act of 1945, closely patterned after, and continuing the procedure of, the Reorganization Act of 1939. During the almost 2½ years that the 1945 act was in effect, seven reorganization plans were transmitted to the Congress; four became effective and three were disapproved.

The concurrent resolution procedure authorized by the 1939 and 1945 acts proved highly effective in those important prewar and postwar years. Those acts, however, contained a major defect which had been common in all the reorganization legislation up until that time; namely, they provided for the outright exemption of certain specified agencies and functions and the requirement for the special handling of others, thus preventing the application of the acts equally to all parts of the executive branch. Upon the recommendations of the President and the first Hoover Commission to make the reorganization plan procedure comprehensive in its scope, the Reorganization Act of 1949 contained no such exemptions or limitations. This was a major improvement in reorganization legislation. Coupled with that improvement was a change in the disapproval procedure.

The Reorganization Act of 1949 provided for congressional disapproval of a plan by the adoption of a resolution by a majority of the authorized membership of either House of the Congress. This was the so-called one-House, constitutional-majority disapproval arrangement. When the President's authority to transmit reorganization plans under the act was extended in 1957, this provision was deleted. Since that time a simple majority of either House has been able to disapprove a reorganization plan. In 1964, Congress provided that no reorganization under the act shall have the effect of "* * * creating any new executive department, or abolishing or transferring an executive department or all the functions thereof, or consolidating any two or more executive departments or all the functions thereof; * * *."

The period during which reorganization plans could be transmitted to the Congress under the Reorganization Act of 1949 was originally scheduled to expire March 31, 1953, but it has been extended five times and, as I mentioned earlier, now expires on June 1, 1965.

Great strides have been made since the Reorganization Act of 1949 became law on June 20, 1949. Sixty-eight reorganization plans have been transmitted to the Congress, and 49 have become effective.

Taking the broadest view, since the first Reorganization Act of 1939 became law, virtually the entire structure of the executive branch has been reshaped by changes made under the cooperative Presidential-congressional approach embodied in the Reorganization Acts. Every agency in the Executive Office of the President has had its organization affected by actions under the reorganization acts. Every executive department has benefited from organizational adjustments made by reorganization plans; likewise, the Civil Service Commission, the Housing and Home Finance

Agency, and many of the other major independent agencies have been reorganized. Viewed thus, the reorganization plan is a vital instrument for keeping our governmental house in order. One group, President Truman's Advisory Committee on Management, said in 1952:

"We therefore think there is good reason to regard the invention and acceptance of this tool for reorganization as the greatest single enabling step toward management improvement in the Federal Government in this generation." ("Report to the President," December 1952, p. 6.)

The Reorganization Act of 1949 was enacted following the strong recommendation of the first Hoover Commission on Organization of the Executive Branch of the Government that the President be given authority to prepare and transmit plans of reorganization to the Congress. The Commission stated:

"This authority is necessary if the machinery of Government is to be made adaptable to the ever changing requirements of administration, and if efficiency is to become a continuing rather than a sporadic concern of the Federal Government."

The very first recommendation of the second Hoover Commission on December 31, 1954, was as follows:

"As a result of unanimous vote at its meeting held on November 15, 1954, the Commission recommends to the Congress that the authority of the President to file reorganization plans, which expires on April 1, 1955, be extended" ("Progress Report," p. 22).

Thus, each of the two Hoover Commissions has urged that the reorganization plan authority be continued as a means for attaining better Government organization.

Extensions of the reorganization authority have consistently been reported favorably by this committee. In its report on the 1961 extension, the committee's report stated:

"Under the rules of the House, this committee is given the responsibility of evaluating the effects of laws enacted to reorganize the executive branch of the Government and studying the operation of Government activities at all levels with a view to determining its economy and efficiency. With this responsibility always in mind the committee favorably reported the Reorganization Act of 1949 and recommended its successive extensions. It believes the act has proved a useful tool in the past and should be continued. With the modification made in 1957 requiring only a simple majority of either House to pass a disapproval resolution the powers of neither executive nor legislative branches seem to be greatly out of balance."

The President, as Chief Executive, is responsible for the efficient management of the executive branch. As the tasks of Government become steadily more exacting, and as the range of Government's activities becomes more complex in response to the needs of our times, the importance of sound organization and management assumes critical proportions.

Economy, efficiency, and clear lines of executive responsibility are central to the faithful execution of the laws. The authority to transmit plans under the Reorganization Act is an essential tool to aid the President in meeting his responsibilities.

Reorganization is a continuing necessity to insure optimum organizational arrangements for changing programs and circumstances. For these reasons, I recommend that the Congress afford continuing Reorganization Act authority by enacting H.R. 4623 into law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

SECTION 5 OF THE REORGANIZATION ACT OF 1949

(63 Stat. 205; 5 U.S.C. 133z)

LIMITATIONS ON POWERS WITH RESPECT TO REORGANIZATIONS

SEC. 5. [(a)] No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of—

(1) creating any new executive department, or abolishing or transferring an executive department or all the functions thereof or consolidating any two or more executive departments or all the functions thereof; or

(2) continuing any agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made; or

(3) continuing any function beyond the period authorized by law for its exercise, or beyond the time when it would have terminated if the reorganization had not been made; or

(4) authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is transmitted to the Congress; or

(5) increasing the term of any office beyond that provided by law for such office; or

(6) transferring to or consolidating with any other agency the municipal government of the District of Columbia or all those functions thereof which are subject to this Act, or abolishing said government or all said functions.

[(b) No provision contained in a reorganization plan shall take effect unless the plan is transmitted to the Congress before June 1, 1965.]

APPENDIX

[Public Law 109—81st Congress, as Amended]

5 U.S.C. 133z

[Chapter 226—1st Session]

[H.R. 2361]

AN ACT To provide for the reorganization of Government agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I

SHORT TITLE

Section 1. This Act may be cited as the "Reorganization Act of 1949".

NEED FOR REORGANIZATIONS

Sec. 2. (a) The President shall examine and from time to time reexamine the organization of all agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(1) to promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding under the provisions of this Act, and can be accomplished more speedily thereby than by the enactment of specific legislation.

REORGANIZATION PLANS

SEC. 3. Whenever the President, after investigation, finds that—

(1) the transfer of the whole or any part of any agency, or of the whole or any part of the functions thereof, to the jurisdiction and control of any other agency; or

(2) the abolition of all or any part of the functions of any agency; or

(3) the consolidation or coordination of the whole or any part of any agency, or of the whole or any part of the functions thereof, with the whole or any part of any other agency or the functions thereof; or

(4) the consolidation or coordination of any part of any agency or the functions thereof with any other part of the same agency or the functions thereof; or

(5) the authorization of any officer to delegate any of his functions; or

(6) the abolition of the whole or any part of any agency which agency or part does not have, or upon the taking effect of the reorganization plan will not have any functions,

is necessary to accomplish one or more of the purposes of section 2(a) he shall prepare a reorganization plan for the making of the reorganizations as to which he has made findings and which he includes in the plan, and transmit such plan (bearing an identifying number) to the Congress, together with a declaration that, with respect to each reorganization included in the plan, he has found that such reorganization is necessary to accomplish one or more of the purposes of section 2(a). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session. The President, in his message transmitting a reorganization plan, shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of such function, and shall specify the reduction of expenditures (itemized so far as practicable) which it is probable will be brought about by the taking effect of the reorganizations included in the plan.

OTHER CONTENTS OF PLANS

SEC. 4. Any reorganization plan transmitted by the President under section 3—

(1) shall change, in such cases as he deems necessary, the name of any agency affected by a reorganization, and the title of its head; and shall designate the name of any agency resulting from a reorganization and the title of its head;

(2) may include provisions for the appointment and compensation of the head and one or more other officers of any agnecy (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan such provisions are necessary. The head so provided for may be an individual or may be a commission or board with two or more members. In the case of any such appointment the term of office shall not be fixed at more than four years, the compensation shall not be at a rate in excess of that found by the President to prevail in respect of comparable

officers in the executive branch, and, if the appointment is not under the classified civil service, it shall be by the President, by and with the advice and consent of the Senate, except that, in the case of any officer of the municipal government of the District of Columbia, it may be by the Board of Commissioners or other body or officer of such government designated in the plan;

(3) shall make provision for the transfer or other disposition of the records, property, and personnel affected by any reorganization;

(4) shall make provision for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with any function or agency affected by a reorganization, as he deems necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have such functions after the reorganization plan is effective, but such unexpended balances so transferred shall be used only for the purposes for which such appropriation was originally made;

(5) shall make provision for terminating the affairs of any agency abolished.

LIMITATIONS ON POWERS WITH RESPECT TO REORGANIZATION

SEC. 5. (a) No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of—

(1) abolishing or transferring an executive department or all the functions thereof or consolidating any two or more executive departments or all the functions thereof; or

(2) continuing any agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made; or

(3) continuing any function beyond the period authorized by law for its exercise, or beyond the time when it would have terminated if the reorganization had not been made; or

(4) authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is transmitted to the Congress; or

(5) increasing the term of any office beyond that provided by law for such office; or

(6) transferring to or consolidating with any other agency the municipal government of the District of Columbia or all those functions thereof which are subject to this Act, or abolishing said government or all said functions.

(b) No provision contained in a reorganization plan shall take effect unless the plan is transmitted to the Congress before June 1 1965.

TAKING EFFECT OF REORGANIZATION

SEC. 6. (a) Except as may be otherwise provided pursuant to subsection (c) of this section, the provisions of the reorganization plan shall take effect upon the expiration of the first period of sixty calendar days, of continuous session of the Congress, following the date on which the plan is transmitted to it; but only if, between the date of transmittal and the expiration of such sixty-day period there has not

been passed by either of the two Houses a resolution stating in substance that the House does not favor the reorganization plan.

(b) For the purposes of subsection (a)—

(1) continuity of session shall be considered as broken only by an adjournment of the Congress sine die; but

(2) in the computation of the sixty-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain.

(c) Any provision of the plan may, under provisions contained in the plan, be made operative at a time later than the date on which the plan shall otherwise take effect.

DEFINITION OF "AGENCY"

SEC. 7. When used in this Act, the term "agency" means any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government, and means also any and all parts of the municipal government of the District of Columbia except the courts thereof. Such term does not include the Comptroller General of the United States or the General Accounting Office, which are a part of the legislative branch of the Government.

MATTERS DEEMED TO BE REORGANIZATIONS

SEC. 8. For the purposes of this Act the term "reorganization" means any transfer, consolidation, coordination, authorization, or abolition, referred to in section 3.

SAVING PROVISIONS

SEC. 9. (a)(1) Any statute enacted, and any regulation or other action made, prescribed, issued, granted, or performed in respect of or by any agency or function affected by a reorganization under the provisions of this Act, before the effective date of such reorganization, shall, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, have the same effect as if such reorganization had not been made; but where any such statute, regulation, or other action has vested the function in the agency from which it is removed under the plan, such function shall, insofar as it is to be exercised after the plan becomes effective, be considered as vested in the agency under which the function is placed by the plan.

(2) As used in paragraph (1) of this subsection the term "regulation or other action" means any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(b) No suit, action, or other proceeding lawfully commenced by or against the head of any agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of the taking effect of any reorganization plan under the provisions of this Act, but the court may, on motion or supplemental petition filed at any time within twelve months after such reorganization plan takes effect, showing a necessity for a sur-

vival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the successor of such head or officer under the reorganization effected by such plan or, if there be no such successor, against such agency or officer as the President shall designate.

UNEXPENDED APPROPRIATIONS

SEC. 10. The appropriations or portions of appropriations unexpended by reason of the operation of this Act shall not be used for any purpose, but shall be impounded and returned to the Treasury.

PRINTING OF REORGANIZATION PLANS

SEC. 11. Each reorganization plan which shall take effect shall be printed in the Statutes at Large in the same volume as the public laws, and shall be printed in the Federal Register.

TITLE II

SEC. 201. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in such House in the case of resolutions (as defined in section 202); and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

SEC. 202. As used in this title, the term "resolution" means only a resolution of either of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the ——— does not favor the reorganization plan numbered — transmitted to Congress by the President on ————————, 19—.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; and does not include a resolution which specifies more than one reorganization plan.

SEC. 203. A resolution with respect to a reorganization plan shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

SEC. 204. (a) If the committee to which has been referred a resolution with respect to a reorganization plan has not reported it before the expiration of ten calendar days after its introduction, it shall then (but not before) be in order to move either to discharge the committee from further consideration of such resolution, or to discharge the committee from further consideration of any other resolution with respect to such reorganization plan which has been referred to the committee.

(b) Such motion may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same reorganization plan), and debate thereon shall be limited to not to exceed one hour, to be equally divided between those favoring and those opposing the resolution. No amendment to such motion shall be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(c) If the motion to discharge is agreed to or disagreed to, such motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same reorganization plan.

SEC. 205. (a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. No amendment to such motion shall be in order and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(b) Debate on the resolution shall be limited to not to exceed ten hours, which shall be equally divided between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

SEC. 206. (a) All motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to a reorganization plan, and all motions to proceed to the consideration of other business, shall be decided without debate.

(b) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

Approved June 20, 1949.

MINORITY VIEWS

H.R. 4623 would have the effect of making permanent the President's authority to submit reorganization plans to the Congress under the Reorganization Act of 1949, as amended.

The act has demonstrated its effectiveness in promoting economy and efficiency in the executive branch of the Government, and therefore the undersigned are not opposed to its extension. However, it is important that each Congress review this delegation of legislative authority and continue the power only if it deems it advisable. Therefore, we cannot agree to outright repeal of the time limitation.

The Constitution expressly vests the legislative power of the United States in the Congress and specifies that "every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States" who may then give his approval or disapproval.

The Reorganization Act of 1949, as amended, reverses this constitutional process and delegates some legislative power to the President by authorizing him to propose reorganization legislation subject to a limited right of veto in the Congress.

The Congress has agreed to this irregular procedure because the purposes of the act "can be accomplished more speedily thereby than by enactment of specific legislation." The act is thus deliberately designed to strengthen the hand of the executive in derogation of the power of Congress.

Since extensions of the act constitute surrender by the Congress of some of the legislative responsibility and jurisdiction over Federal reorganizations to the President, there has been some reluctance in granting extensions of the reorganization power in years gone by. In the face of the continual disposition of every administration to press for more executive reorganization power, the Congress needs to preserve the necessity for reviewing the operation of the law at regular intervals. If it is satisfied, a simple extension of the law is then all that is required. If it is dissatisfied, it is not then faced with the necessity of repealing, over a probable Presidential veto, a "permanent" law.

Since the enactment of the basic statute in 1949 Congress has not surrendered its legislative jurisdiction on these matters on a permanent basis. The 1949 act was given an original duration of 4 years. Since then it has been extended for no more than 2 years at a time and in 1964 was extended for about another year.

Since the Economy Act of 1932, which first provided the authority for the President to submit reorganization plans to the Congress, the procedures have often been reviewed, reevaluated, and revised. The need for these successive changes in the reorganization plan procedure made in the Economy Act of 1933, the Reorganization Acts of 1939, 1945, and 1949, demonstrates the value of periodic congressional review.

Since 1949, the value of regular review of the legislation has further been demonstrated by the fact that following such review Congress has frequently found it necessary to amend the Reorganization Act: when the first 4-year grant of authority expired in 1953 the 2-year extensions which have since become the general rule were initiated; when the act was extended in 1957 the "constitutional majority" feature was stricken making it possible for either House to reject a plan by a simple majority; and, most recently, in 1964, an amendment was added to prevent the use of the act for the purpose of creating a new department. Thus, it is clear that the whole legislative history of the reorganization procedure has been one of experimentation and change.

Congress, in its wisdom, has even seen fit to permit the authority to lapse on occasion. The much-vaunted accomplishments under the act have been achieved under these successive temporary extensions of the act and not under a permanent grant of power.

It is argued that the President's authority to transmit reorganization plans should be made commensurate with his "permanent duty" to examine and reexamine the organization of all agencies of Government to determine what changes are necessary. These duties are incumbent on the President whether or not the authority to transmit reorganization plans is extended. It is his obligation to examine the organization of agencies of Government whether he submits reorganization plans to Congress or has reorganization legislation introduced by request. The undersigned see no inconsistency between a short-term extension of the President's reorganization authority and his "permanent duty" to examine organization and to determine upon changes. We would rather see the extension of the President's authority to transmit reorganization plans be made commensurate with the constitutional power of each House to adopt its own rules.

A resolution with respect to a reorganization plan submitted by the President under title I of the act is subject to procedures prescribed in title II. Title II is an exercise of the rulemaking power of the Senate and House of Representatives, respectively, prescribing rules of procedure different from the normal rules of the House and Senate. It is our opinion that the use of these rules should be compatible with the general proposition that the power of the House of Representatives to make its own rules may not be impaired or controlled by the rules of the preceding House or by a law passed by a prior Congress. The House should maintain its right to review the operation of all rules of the House at 2-year intervals whether they are set forth in the Reorganization Act or elsewhere.

So, it is proposed that H.R. 4623 be amended as follows:

That all after the enacting clause be stricken and the following language inserted:

"That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205) is amended by striking out 'June 1, 1965' and inserting in lieu thereof 'June 1, 1967' ".

The effect of this amendment would be to extend the President's authority under the act for only 2 years, instead of making it permanent as the bill would provide.

CLARENCE J. BROWN.
FLORENCE P. DWYER.
ROBERT P. GRIFFIN.
OGDEN R. REID.
FRANK J. HORTON.
DELBERT L. LATTA.
DONALD RUMSFELD.
WILLIAM L. DICKINSON.
JOHN N. ERLENBORN.
HOWARD H. CALLAWAY.
EDWARD J. GURNEY.

○

Union Calendar No. 76

89TH CONGRESS
1ST SESSION

H. R. 4623

[Report No. 184]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1965

Mr. DAWSON introduced the following bill; which was referred to the Committee on Government Operations

MARCH 17, 1965

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

A BILL

Further amending the Reorganization Act of 1949.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended, is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

Union Calendar No. 76

89TH CONGRESS
1ST SESSION

H. R. 4623

[Report No. 184]

A BILL

Further amending the Reorganization Act of 1949.

By Mr. DAWSON

FEBRUARY 9, 1965

Referred to the Committee on Government Operations

MARCH 17, 1965

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE

(For information only; should not be quoted or cited)

UNITED STATES DEPARTMENT OF AGRICULTURE
Washington, D. C. 20250
Official Business Postage and Fees paid
U. S. Department of Agriculture

Issued April 9, 1965
For actions of April 8, 1975
89th-1st; No. 63

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HIGHLIGHTS: Both Houses agreed to conference report on acreage-poundage tobacco bill. Senate committee reported bill to extend Reorganization Act. Sen. Kennedy, N. Y., spoke in support of cigarette labeling and advertising bill. Reps. Quie and Nelsen criticized Secretary Freeman's testimony on CCC grain "dumping". House Rules Committee cleared bill to extend Reorganization Act. House subcommittee voted to report bill to create Dept. of Housing and Urban Development. House subcommittee voted to report northwest flood disaster relief bill.

SENATE

1. TOBACCO. Both Houses received and agreed to the conference report on H.R. 5721, to provide for acreage-poundage marketing quotas for tobacco (H. Rept. 228) (pp. 7183-5, 7288-9). This bill will now be sent to the President.

   Sen. Kennedy spoke in support of legislation to regulate the labeling and advertising of cigarettes. pp. 7258-9

2. REORGANIZATION. The Government Operations Committee reported with amendments S. 1135, to amend and extend the Reorganization Act of 1949 (S. Rept. 154). p. 7341

3. EDUCATION. Continued debate on H. R. 2362, the proposed Elementary and Secondary Education Act of 1965. pp. 7262-77, 7280-8, 7289-7341

4. PESTICIDES. Sen. Dirksen stated that "hysteria, half-truths, or insufficient information" must not affect actions with regard to the use of pesticides, and inserted an article reviewing the investigation of the House Appropriations Committee on pesticides, "Unit of House Is Rewriting 'Silent Spring'." p. 7238

5. NATIONAL PARKS. The Interior and Insular Affairs Committee reported with amendments S. 339, to provide for the establishment of the Agate Fossil Beds National Monument, Nebr. (S. Rept. 150). p. 7237

6. FARM LABOR. The Labor and Public Welfare Committee submitted a report, "The Migratory Farm Labor Problem in the United States" (S. Rept. 155). p. 7341

7. FOREIGN AID. Sen. Mansfield inserted, and he and others commended, the President's speech on Vietnam and southeast Asia, in which he proposed an economic development program including the use of surplus food, for this area. pp. 7231-37

8. COTTON. Sen. Tower inserted the cotton policy statement adopted by the West Texas Chamber of Commerce. p. 7248

9. FOREIGN TECHNICAL ASSISTANCE. Sen. Nelson spoke in support of enactment of legislation to expand the role of U. S. colleges and universities in the foreign technical assistance program, along the lines of the agricultural experiment station system, and inserted a Univ. of Wisconsin statement in support of such legislation. pp. 7244-6

10. CONSERVATION. Sen. Bible inserted a speech by Under Secretary of the Interior Carver reviewing Federal-State-local government cooperation in the field of conservation and natural resource development. pp. 7260-1

11. TRANSPORTATION. Sen. Ellender inserted a speech by Sen. Bartlett reviewing the role of the U. S. merchant marine in foreign commerce. pp. 7253-4

HOUSE

12. FARM PROGRAM. Rep. Quie criticized Secretary Freeman's testimony on the farm bill, stating that the Secretary made "an unprecedented and rare admission that he manipulated farm prices by dumping Commodity Credit Corporation feed grain surpluses on the market over the past 4 years to hold down farm prices." p. 7183

Rep. Nelsen criticized Secretary Freeman's testimoney on the farm bill, stating that "Mr. Freeman disclosed that out of 3 million farmers...only 400,000 earn even close to parity of income." p. 7191

13. REORGANIZATION. The Rules Committee reported a resolution for consideration of H. R. 4623, to extend permanently the authority of the President to transmit reorganization plans to Congress under the Reorganization Act of 1949. p. 7183

14. WATER POLLUTION. Rep. Saylor recommended "emphasized research in the field of water pollution", and suggested close scrutiny of a report, "The Disposal of Municipal Sewage." pp. 7187-8

15. FOOD. Rep. Grabowski commended and inserted an article, "The Last Frontier," reporting on work being done in the Antarctic area involving research on forms of wildlife, mineral deposits and food forms. pp. 7219-25

16. FEDERAL-STATE PROGRAMS. Received from GAO a report of "inadequate administrative controls" over Federal Funds used for financing Federal-State programs, Dept. of Labor. p. 7228

17. MEDICARE. Passed by a vote of 313 to 115, without amendment, H. R. 6675, to provide a hospital insurance program for the aged under the Social Security Act with a supplementary health benefits program and an expanded program of medical assistance, to increase benefits under the Old-Age, Survivors, and Disability Insurance System, and to improve the Federal-State public assistance programs. pp. 7091-183, 7186, 7193, 7211-16, 7227

18. HOUSING. A subcommittee of the Government Operations Committee voted to report to the full committee H. R. 6927, to create a Department of Housing and Urban Development. p. D281

19. FLOOD CONTROL. A subcommittee of the Public Works Committee voted to report to the full committee H. R. 798, to provide assistance to the States of Calif., Ore., Wash., and Idaho for the reconstruction of areas damaged by recent floods and high waters. p. D281

20. MANPOWER. The "Daily Digest" states thatconferees "agreed to a 3-year extension of the Manpower Development and Training Act of 1962." p. D282

21. URBAN RENEWAL. Rep. Widnall inserted a magazine article, "The Failure of Urban Renewal--A Critique and Some Proposals." pp. 7206-11

22. ADJOURNED unitl Mon., Apr. 12. p. 7228

ITEMS IN APPENDIX

23. ELECTRIFICATION. Extension of remarks of Rep. Pepper opposing proposed legislation which would deprive the Federal Power Commission of its authority to regulate interstate wholesale electric sales. pp. A1724-7

24. FARM PROGRAM. Rep. Harvey inserted an article on the President's farm bill, "Farmer and the Market." pp. A1729-30

Extension of remarks of Rep. Culver commending and inserting an article, "Johnson on Agriculture", and stating that it emphasizes the "overwhelming interdependency" of urban and rural America. p. A1745

25. EDUCATION. Speech in the House by Rep. Hechler supporting the proposed Elementary and Secondary Education Act. pp. A1731-2

26. PATENTS. Rep. Brown inserted a speech calling attention "to the plight" of the independent inventor. pp. A1733-4

27. SMALL BUSINESS. Rep. Williams inserted an address by Eugene P. Foley, SBA Administrator, explaining the functions and scope of his agency. pp. 441740-1

28. RECREATION; WATER RESOURCES. Extension of remarks of Rep. Stanton inserting 3 radio broadcasts on the importance of water resources development and the improvement of recreational facilities. p. A1743

BILLS INTRODUCED

29. RESEARCH. H. R. 7301 by Rep. Hanna, to provide for expanded research in oceans and the Great Lakes, to establish a National Oceanographic Council; to Merchant Marine and Fisheries Committee.

H. R. 7312 by Rep. Tupper, to provide for the best care, welfare, and safeguards against suffering for certain animals used for scientific purposes without impeding necessary research; to Interstate and Foreign Commerce.

H. R. 7335 by Rep. McVicker and H. R. 7339 by Rep. Fulton, Pennsylvania, to promote economic growth by supporting State and regional centers to place the findings of science usefully in the hands of American enterprise; to Interstate and Foreign Commerce Committee. Remarks of Rep. McVicker p. 7226

30. PUBLIC WORKS. H. R. 7302 by Rep. Huot and H. R. 7314 by Rep. Wright, to provide grants for public works and development facilities, other financial assistance, and the planning and coordination needed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions; to Public Works Committee.

31. PERSONNEL. S. 1745 by Sen. Sparkman, to amend the Civil Service Retirement Act, as amended, to provide for the recomputation of annuities of certain retired employees who elected reduced annuities at the time of retirement in order to provide survivor annuities for their spouses, and for the recomputation of survivor annuities for the surviving spouses of certain former employees who died in service or after retirement; to Post Office and Civil Service Committee.

H. R. 7322 by Rep. May, to repeal section 165 of the Revised Statutes relating to the appointment of women to clerkships in the executive departments; to Post Office and Civil Service Committee.

32. FARM LABOR. H. R. 7317 by Rep. Dyal, to encourage the States to extend coverage under their State unemployment compensation laws to agricultural labor; to Ways and Means Committee.

33. ELECTRIFICATION. H. R. 7334 by Rep. Hosmer, to authorize the Secretary of the Interior to make disposition of geothermal steam and associated geothermal resources; to Interior and Insular Affairs Committee.

Calendar No. 143

89TH CONGRESS
1st Session

SENATE

REPORT
No. 154

FURTHER AMENDING THE REORGANIZATION ACT OF 1949

April 8, 1965.—Ordered to be printed

Mr. Ribicoff, from the Committee on Government Operations, submitted the following

REPORT

[To accompany S. 1135]

The Committee on Government Operations, to whom was referred the bill (S. 1135) to further amend the Reorganization Act of 1949, as amended, so that such act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On line 7 strike out "June 1, 1967", and insert in lieu thereof, "June 1, 1969".

PURPOSE

S. 1135, as amended by the committee, would extend for a period of 4 years the authority of the President, under the Reorganization Act of 1949, as amended, to submit reorganization plans to the Congress proposing reorganizations in the executive branch of the Government.

The Reorganization Act of 1949, as amended, authorizes the President to submit reorganization plans to the Congress in order to accomplish certain stated purposes. Section 2(a) sets forth these purposes and places certain responsibilities upon the President for determining appropriate action to accomplish them; section 2(b) states congressional policy with respect to these purposes; section 3 lists the types of reorganizations which are authorized; section 4 specifies certain provisions which a reorganization plan may or must contain; section 5 contains limitations with respect to reorganizations which may be accomplished and provides an expiration date for the author-

ity to submit plans; and section 6 provides that such plans shall become effective unless they are disapproved by either House of the Congress by a majority of those present and voting, within 60 days of continuous session of the Congress, following the date of their submission. Under existing law, the authority of the President to submit such plans will expire on June 1, 1965. S. 1135, as amended by the committee, would extend this authority until June 1, 1969.

THE PRESIDENT'S REQUEST FOR PERMANENT AUTHORITY

In a series of messages to the Congress, President Lyndon B. Johnson has indicated his intention to reshape much of the organizational structure of the executive branch in order to carry out the programs and policies of his administration more effectively.

In his 1965 state of the Union message to the Congress, after setting forth the goals of his administration, the President stated:

> For Government to serve these goals it must be modern in structure, efficient in action, and ready for any emergency. I am currently reviewing the structure of the executive branch. I hope to reshape and reorganize it to meet more effectively the tasks of today.

Subsequently, in his budget message, he said:

> * * * We must reorganize and modernize the structure of the executive branch in order to focus responsibilities and increase efficiency. I will shortly propose certain reorganizations which will constitute the initial and most urgent steps that I deem necessary to consolidate functions and strengthen coordination of related activities.
>
> I will ask that permanent reorganization authority be granted to the President to initiate improvements in Government organization, subject to the disapproval of the Congress.

In a communication, dated February 3, 1965, and transmitted to the Senate on February 8, the President requested permanent reorganization authority and forwarded a draft bill to amend the Reorganization Act of 1949, as amended, by eliminating the expiration date for the authority to transmit reorganization plans to the Congress under the act.

The draft bill was introduced as S. 1134 by the chairman of the Subcommittee on Executive Reorganization and would give the President the permanent reorganization authority he requested. The subject bill, S. 1135, introduced by the chairman of the full committee, proposed to extend the President's reorganization authority until June 1, 1967, a period of 2 years from the present expiration date.

The President's letter and the draft bill to further amend the Reorganization Act of 1949 follow:

THE WHITE HOUSE,
Washington, February 3, 1965.

DEAR MR. PRESIDENT: In my recent budget message I stated that "I will ask that permanent reorganization authority be granted to the President to initiate improvements in Government organization, subject to the disapproval of the Congress."

Accordingly, there is forwarded herewith a draft of legislation to further amend section 5 of the Reorganization Act of 1949. The bill would eliminate the expiration date for the authority to transmit reorganization plans to the Congress under the act.

Under section 2(a) of the Reorganization Act of 1949, the President has a duty to "examine and from time to time reexamine the organization of all agencies of the Government and * * * determine what changes therein are necessary * * *." This responsibility under the statute is permanent. However, the authority to transmit reorganization plans to effect changes in the Government's structure has been limited to specified periods. The Congress has periodically extended that authority and last year renewed it until June 1, 1965.

With only a few lapses since 1932, authority generally similar to that conferred by the present Reorganization Act has been available to the Presidents then in office. The usefulness of the authority to transmit reorganization plans to the Congress and the continuing need for such authority to carry out fully the purposes of the Reorganization Act have been clearly demonstrated. The time has now come, therefore, to eliminate any expiration date with respect to that authority; the authority should be made commensurate with the responsibility of the President under the same statute.

From this authority will come benefits for the people whose Government this is.

The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them. Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.

Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm, and effectiveness.

The Congress itself recognizes these ideals, and has many times approved the ideas and hopes of this request. It is in that spirit of the Congress I respectfully urge the Congress to an early and favorable consideration of the proposed legislation.

Sincerely,

LYNDON B. JOHNSON.

Hon. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.

A BILL To further amend section 5 of the Reorganization Act of 1949

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That section 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended, is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

BACKGROUND

Reorganization authority was first given to the President in the Executive Reorganization Act of 1932 (title IV of the act of June 30, 1932, 47 Stat. 413). As originally enacted, it authorized the President, by Executive order, to consolidate, redistribute, and transfer various agencies and functions, but did not permit him to abolish any executive department or agency created by statute or to transfer or eliminate its functions. The 1932 act vested permanent authority in the President and authorized congressional rejection of reorganization proposals by either House of the Congress by a majority of those present and voting. This was the only reorganization act which granted permanent authority, although President Truman requested it twice and Presidents Eisenhower and Kennedy stated that it should be granted.

The permanent authority granted in 1932 was limited to a 2-year period, less than a year later, by an amendment to an appropriation measure (act of March 3, 1933, 47 Stat. 1517). While limiting the President's authority to a specified period, the 1933 act broadened the scope of that authority but made no provision for congressional disapproval.

The Reorganization Act of 1939 (53 Stat. 561), which authorized the submission of reorganization plans as they are known today, limited the duration of the President's authority to a period of 2 years (until January 21, 1941), and provided for congressional rejection by the adoption of a concurrent resolution. It contained numerous limitations, including a prohibition against the abolition or transfer of an executive department or all the functions thereof, or the establishment of any new executive departments. In addition, it exempted 21 listed agencies. Under this act, the President submitted five plans, all of which became effective.

Title I of the War Powers Act of 1941 (55 Stat. 838) authorized the President to make emergency wartime reorganizations for the duration of the war plus 6 months, and reorganizations under this authority were all temporary in nature.

The Reorganization Act of 1945 (59 Stat. 613) again granted the President reorganization authority for a period of approximately 2 years (until April 1, 1948), despite his request for permanent authority, and provided for congressional rejection by concurrent resolution. It was substantially similar to the 1939 act in that it prohibited the abolishment or transfer of an executive department or all the functions thereof, and it exempted 11 agencies from the operation of the act. Under this act, seven plans were submitted, four became effective, and three were rejected.

The Reorganization Act of 1949 (Public Law 109, 81st Cong.) was originally enacted as a means of expediting reorganizations in the executive branch, following submission of its reports and recommenda-

tions by the first Commission on Organization of the Executive Branch of the Government (Hoover Commission). Since it was designed primarily as a means of enabling the implementation of these recommendations, it gave the President much greater latitude than the 1939 or 1945 acts by eliminating exemptions of specified agencies and authorizing him to submit reorganization plans providing for the creation of new departments at the Cabinet level. Rejecting the 2-year time limit of the 1939 and 1945 acts and the President's request for permanent authority, the committee approved a 4-year period terminating on April 1, 1953. This was based on the ground that a 2-year period would not allow the President sufficient time to prepare and submit reorganization plans to the Congress, in view of the very extensive work of the Hoover Commission. The method of congressional rejection was also modified by providing for such action by the adoption of a resolution of disapproval by a majority of the authorized membership of either House of the Congress, rather than by the earlier requirement of a concurrent resolution which necessitated action by both Houses. Under the original 1949 act, the President submitted 41 plans, of which 30 became effective and 11 were rejected.

The Reorganization Act of 1949 was subsequently extended for 2-year periods in 1953, 1955, 1957, and 1961. In 1959, this committee reported a bill extending its provisions for 2 additional years, or to June 1, 1961. The House of Representatives approved an identical bill, but both measures died on the Senate Calendar at the end of the 86th Congress. The 1949 Reorganization Act was extended again for 1 year in 1964. Reorganization authority thus lapsed from June 1, 1959, to April 7, 1961, and from June 1, 1963, to July 2, 1964.

In the 1957 extension, the method of congressional rejection was again amended to provide disapproval of reorganization plans by either House of the Congress by a simple majority of those present and voting, and the 1964 extension eliminated the authority of the President to submit plans proposing the creation of new Cabinet departments.

As previously noted, during the 4-year period of the original Reorganization Act of 1949, 41 reorganization plans were submitted, of which 30 became effective and 11 were rejected. Under the subsequent extensions, a total of 27 plans were submitted, of which 20 became effective and 7 were rejected. Thus, between the effective date of the 1949 act and June 1, 1963, the termination date of the President's reorganization authority under the 1961 extension, a total of 68 plans were submitted, of which 50 became effective and 18 were rejected. Between the effective date of the Reorganization Act of 1939 and June 1, 1963, a total of 80 plans were submitted, of which 59 became effective and 21 were rejected. No reorganization plans were transmitted in 1964 and plan No. 1 of 1965, submitted under the 1964 extension, is not included in this compilation.

From the foregoing, it appears that during the entire history of executive reorganization, covering a period of more than 30 years, with the exception of the initial act, the act of June 30, 1932, every subsequent act has granted reorganization authority to the President for a limited period of time, varying from 1 to 4 years, despite the fact that three Presidents have either requested or recommended the granting of permanent authority. Although the 1932 act granted permanent authority, 9 months later it was amended and superseded by a

rider to an appropriation act which limited the President's authority to a period of 2 years.

Set forth below in table I are the statutes which provided the President with reorganization authority, since the enactment of the Executive Reorganization Act of 1932, indicating the duration of the authority and the methods provided for congressional disapproval. Table II contains a summary of actions on reorganization plans submitted between 1939 and 1963. Table III shows the number of reorganization plans which have been submitted by each of the Presidents who have been granted reorganization authority since the enactment of the Reorganization Act of 1939 and the period of time during which they had such authority. A detailed and comprehensive legislative history of reorganization acts which were approved between 1939 and 1963, including reorganizations attempted or accomplished under the authority of these statutes, is contained in Senate Report 1057, 88th Congress. A detailed analysis of all action taken on all reorganization plans submitted under the authority of the Reorganization Act of 1949, as amended, from the 81st through the 88th Congresses, is set forth in the appendix to this report.

TABLE I.—*Statutes providing reorganization authority*

Duration of authority and termination date	Reorganization authority	Method of disapproval
Permanent	Reorganization Act of 1932: Title IV of the Legislative Appropriations Act for fiscal year 1933, Public Law 212, 72d Cong.	Simple resolution of either House.
2 years (Mar. 20, 1935)	Acts of Mar. 3 and Mar. 20, 1933: Amending and superseding the act of June 20, 1932.	No provision (enactment of law required).
2 years (Jan. 21, 1941)	Reorganization Act of 1939: Public Law 19, 76th Cong. (act of Apr. 3, 1939).	Concurrent resolution.
Duration of war, plus 6 months, or such earlier time as designated by Congress.	Title I of War Powers Act of 1941 (act of Dec. 18, 1941).	No provision.
2 years and 3 months (Apr. 1, 1948).	Reorganization Act of 1945: Public Law 263, 79th Cong. (act of Dec. 20, 1945).	Concurrent resolution.
4 years (Apr. 1, 1953)	Reorganization Act of 1949: Public Law 109, 81st Cong. (act of June 20, 1949).	Majority of authorized membership of either House: Senate, 49; House, 218.
2 years (Apr. 1, 1955)	1953 amendment: Public Law 3, 83d Cong. (act of Feb. 11, 1953).	Same as 1949 act.
2 years (June 1, 1957)	1955 amendment: Public Law 16, 84th Cong. (act of Mar. 25, 1955).	Do.
2 years (June 1, 1959)	1957 amendment: Public Law 86-286 (act of Sept. 4, 1957).	Simple resolution of either House.
2 years (June 1, 1963)	1961 amendment: Public Law 87-18 (act of Apr. 7, 1961).	Do.
1 year (June 1, 1965)	1964 amendment: Public Law 88-351 (act of July 2, 1964) (no authority to create new executive departments).	Simple resolution.

TABLE II.—*Summary of action on reorganization plans submitted between 1939 and 1963*

The following table shows the actions under the Reorganization Acts of 1939, 1945, and 1949. The actions under the 1949 act are indicated by dates of extensions and amendments:

Reorganization acts extensions and amendments	Plans submitted	Became effective	Rejected
1939	5	5	0
1945	7	4	3
1949	41	30	11
1953	12	12	0
1955	2	0	2
1957	3	2	1
1961	10	6	4
Total	80	59	21

TABLE III.—*Number of reorganization plans submitted by each President and duration of reorganization authority*

The following table shows the number of reorganization plans which were submitted by each of the Presidents who have been granted reorganization authority since 1939 and the period of time during which they had such authority:

Roosevelt	5 plans in 7 years
Truman	48 plans in 8 years
Eisenhower	17 plans in 8 years
Kennedy	10 plans in 3 years

COMMITTEE ACTION

Hearings on S. 1134 and S. 1135 were held by the Subcommittee on Executive Reorganization on March 29, 1965. Mr. Harold Seidman, Assistant Director for Management and Organization, Bureau of the Budget, testified in support of the President's request. He reviewed the history of the reorganization authority which has been granted to the President since 1932 and noted that any question of the constitutional validity of conferring permanent reorganization authority upon the President was resolved by safeguards which (1) enabled the rejection of a plan by a simple majority of either House of the Congress, and (2) under the 1964 amendment, the President cannot create any new departments. He stated further that reorganization was a continuing process; that studies are underway which will lead to new proposals, and that some of these studies often require as long as 2 years before they are completed; and that an extension for a period of only 2 years does not afford a President an adequate period of time within which to prepare and submit reorganization plans. However, he pointed out that the objections to a 2-year authority "* * * would not apply with equal validity if the authority was available for 4 years."

The committee is in complete accord with the President's objectives concerning the reorganization and modernization of the structure of the executive branch, and supports fully the statement in his budget message that our Government "must be modern in structure, efficient in action, and ready for any emergency." The committee also supports the President's position concerning his continuing responsibility for the efficient management of the executive branch, not merely because certain responsibilities are imposed upon him by the Reorganization Act of 1949, as amended, but because he is the Chief

Executive of the Nation. Accordingly, it is the position of the committee that the President should have reorganization authority as all Presidents have had since 1932, with the exception of certain lapsed periods, referred to in the preceding section.

However, since enactment of the basic reorganization statute in 1949, the Committee on Government Operations, as well as its predecessor, the Committee on Expenditures in the Executive Departments, has taken the position that the Congress should neither surrender nor abrogate its legislative jursidiction over matters of such significance on a permanent basis. No one proposes to deny the President the authority he needs to effect reorganizations of the executive branch of the Government. The only question is should the Congress surrender its authority over such important matters on a permanent basis and should it deny to future Congresses the right of periodic review of these matters? In the view of the committee the answer is "No."

Facing this identical question in 1949, the Congress gave to the President adequate authority to reorganize the executive branch without abdicating its legislative authority and responsibility. It did so by incorporating provisions which enabled it to exercise control over the delegated authority without the consent of the individual to whom it had been delegated. This was accomplished by providing, first, that the authority delegated to the President was of limited duration and not permanent, and second, a procedure whereby the Congress could disapprove reorganization proposals submitted by the President.

In order to give the President adequate time to prepare and submit reorganization plans based on the Hoover Commission recommendations, the 1949 act established a 4-year time limitation. Subsequent extensions of that authority were limited to shorter periods, usually 2 years. In view of the President's announced intention to reshape much of the organizational structure of the executive branch, the committee concluded that a 4-year period would enable him to accomplish his objectives without doing violence to the constitutional responsibilities of the Congress.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of the rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

[PUBLIC LAW 109—81ST CONGRESS]

[CHAPTER 226—1ST SESSION]

[H.R. 2361]

AN ACT To provide for the reorganization of Government agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SHORT TITLE

SECTION 1. This Act may be cited as the "Reorganization Act of 1949".

NEED FOR REORGANIZATIONS

SEC. 2. (a) The President shall examine and from time to time reexamine the organization of all agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(1) to promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding under the provisions of this Act, and can be accomplished more speedily thereby than by the enactment of specific legislation.

REORGANIZATION PLANS

SEC. 3. Whenever the President, after investigation, finds that—

(1) the transfer of the whole or any part of any agency, or of the whole or any part of the functions thereof, to the jurisdiction and control of any other agency; or

(2) the abolition of all or any part of the functions of any agency; or

(3) the consolidation or coordination of the whole or any part of any agency, or of the whole or any part of the functions thereof, with the whole or any part of any other agency or the functions thereof; or

(4) the consolidation or coordination of any part of any agency or the functions thereof with any other part of the same agency or the functions thereof; or

(5) the authorization of any office to delegate any of his functions; or

(6) the abolition of the whole or any part of any agency which agency or part does not have, or upon the taking effect of the reorganization plan will not have any functions,

is necessary to accomplish one or more of the purposes of section 2(a) he shall prepare a reorganization plan for the making of the reorganizations as to which he has made findings and which he includes in the plan, and transmit such plan (bearing an identifying number) to the Congress, together with a declaration that, with respect to each reorganization included in the plan, he has found that such reorganization is necessary to accomplish one or more of the purposes of section 2(a). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session. The President, in his message transmitting a reorganization plan, shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of such function, and shall specify the reduction of expenditures (itemized so far as practicable) which it is probable will be brought about by the taking effect of the reorganizations included in the plan.

OTHER CONTENTS OF PLANS

SEC. 4. Any reorganization plan transmitted by the President under section 3—

(1) shall change, in such cases as he deems necessary, the name of any agency affected by a reorganization, and the title of its head; and shall designate the name of any agency resulting from a reorganization and the title of its head;

(2) may include provisions for the appointment and compensation of the head and one or more other officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan such provisions are necessary. The head so provided for may be an individual or may be a commission or board with two or more members. In the case of any such appointment the term of office shall not be fixed at more than four years, the compensation shall not be at a rate in excess of that

found by the President to prevail in respect of comparable officers in the executive branch, and, if the appointment is not under the classified civil service, it shall be by the President, by and with the advice and consent of the Senate, except that, in the case of any officer of the municipal government of the District of Columbia, it may be by the Board of Commissioners or other body or officer of such government designated in the plan;

(3) shall make provision for the transfer or other disposition of the records, property, and personnel affected by any reorganization;

(4) shall make provision for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with any function or agency affected by a reorganization, as he deems necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have such functions after the reorganization plan is effective, but such unexpended balances so transferred shall be used only for the purposes for which such appropriation was originally made;

(5) shall make provision for terminating the affairs of any agency abolished.

LIMITATIONS ON POWERS WITH RESPECT TO REORGANIZATION

SEC. 5. (a) No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of—

(1) creating any new executive department, or abolishing or transferring an executive department or all the functions thereof, or consolidating any two or more executive departments or all the functions thereof; or

(2) continuing any agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made; or

(3) continuing any function beyond the period authorized by law for its exercise, or beyond the time when it would have terminated if the reorganization had not been made; or

(4) authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is transmitted to the Congress; or

(5) increasing the term of any office beyond that provided by law for such office; or

(6) transferring to or consolidating with any other agency the municipal government of the District of Columbia or all those functions thereof which are subject to this Act, or abolishing said government or all said functions.

(b) No provision contained in a reorganization plan shall take effect unless the plan is transmitted to the Congress before [June 1, 1965.] *June 1, 1969.*

TAKING EFFECT OF REORGANIZATION

SEC. 6. (a) Except as may be otherwise provided pursuant to subsection (c) of this section, the provisions of the reorganization plan shall take effect upon the expiration of the first period of sixty calendar days, of continuous session of the Congress, following the date on which the plan is transmitted to it; but only if, between the date of transmittal and the expiration of such sixty-day period there has not been passed by either of the two Houses a resolution stating in substance that the House does not favor the reorganization plan.

(b) For the purposes of subsection (a)—

(1) continuity of session shall be considered as broken only by an adjournment of the Congress sine die; but

(2) in the computation of the sixty-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain.

(c) Any provision of the plan may, under provisions contained in the plan, be made operative at a time later than the date on which the plan shall otherwise take effect.

DEFINITION OF "AGENCY"

SEC. 7. When used in this Act, the term "agency" means any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government, and means also any and all parts of the municipal government of the District of Columbia except the courts thereof. Such term does not include the Comptroller General of the United States or the General Accounting Office, which are a part of the legislative branch of the Government.

MATTERS DEEMED TO BE REORGANIZATIONS

SEC. 8. For the purposes of this Act the term "reorganization" means any transfer, consolidation, coordination, authorization, or abolition, referred to in section 3.

SAVING PROVISIONS

SEC. 9. (a)(1) Any statute enacted, and any regulation or other action made, prescribed, issued, granted, or performed in respect of or by any agency or function affected by a reorganization under the provisions of this Act, before the effective date of such reorganization, shall, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, have the same effect as if such reorganization had not been made; but where any such statute, regulation, or other action has vested the function in the agency from which it is removed under the plan, such function shall, insofar as it is to be exercised after the plan becomes effective, be considered as vested in the agency under which the function is placed by the plan.

(2) As used in paragraph (1) of this subsection the term "regulation or other action" means any regulation, rule, order, policy, determina-

tion, directive, authorization, permit, privilege, requirement, designation, or other action.

(b) No suit, action, or other proceeding lawfully commenced by or against the head of any agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of the taking effect of any reorganization plan under the provisions of this Act, but the court may, on motion or supplemental petition filed at any time within twelve months after such reorganization plan takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the successor of such head or officer under the reorganization effected by such plan or, if there be no such successor, against such agency or officer as the President shall designate.

UNEXPENDED APPROPRIATIONS

SEC. 10. The appropriations or portions of appropriations unexpended by reason of the operation of this Act shall not be used for any purpose, but shall be impounded and returned to the Treasury.

PRINTING OF REORGANIZATION PLANS

SEC. 11. Each reorganization plan which shall take effect shall be printed in the Statutes at Large in the same volume as the public laws, and shall be printed in the Federal Register.

TITLE II

SEC. 201. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in such House in the case of resolutions (as defined in section 202); and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

SEC. 202. As used in this title, the term "resolution" means only a resolution of either of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the ——— does not favor the reorganization plan numbered — transmitted to Congress by the President on ————————, 19—.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; and does not include a resolution which specifies more than one reorganization plan.

SEC. 203. A resolution with respect to a reorganization plan shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

SEC. 204. (a) If the committee to which has been referred a resolution with respect to a reorganization plan has not reported it before the expiration of ten calendar days after its introduction, it shall then (but not before) be in order to move either to discharge the committee from further consideration of such resolution, or to discharge the committee from further consideration of any other resolution with respect to such reorganization plan which has been referred to the committee.

(b) Such motion may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same reorganization plan), and debate thereon shall be limited to not to exceed one hour, to be equally divided between those favoring and those opposing the resolution. No amendment to such motion shall be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(c) If the motion to discharge is agreed to or disagreed to, such motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same reorganization plan.

SEC. 205. (a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. No amendment to such motion shall be in order and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(b) Debate on the resolution shall be limited to not to exceed ten hours, which shall be equally divided between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

SEC. 206. (a) All motions to postpone, made with respect to the discharge from the committee, or the consideration of, a resolution with respect to a reorganization plan, and all motions to proceed to the consideration of other business, shall be decided without debate.

(b) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

Approved June 20, 1949.

APPENDIX A

Action taken by the 81st, 82d, 83d, 84th, 85th, 86th, 87th, and 88th Congresses on reorganization plans under authority of the Reorganization Act of 1949, as amended, follows:

Action on reorganization plans, 81st Cong.

REORGANIZATION PLANS OF 1949

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Department of Welfare	147	[1] 851	60	32	Aug. 16, 1949
2	Bureau of Employment Security	151	[2] 852	[3] [4] 32	57	Aug. 17, 1949
3	Post Office Department	None	837			
4	National Security Council and National Security Resources Board	None	838			
5	Civil Service Commission	None	839			
6	Maritime Commission	None	840			
7	Public Roads Administration	155	927	[3] 40	47	Do.
8	National Military Establishment [5]	None	None			

REORGANIZATION PLANS OF 1950

1	Department of Treasury	246-247	[6] 1518	65	13	May 11, 1950
2	Department of Justice	None	1693			
3	Department of Interior	None	1545			
4	Department of Agriculture	263	[6] 1566	[7]		May 18, 1950
5	Department of Commerce	259	[6] 1561	[3] [4] 29	43	May 23, 1950
6	Department of Labor	None	1684	[4]		
7	Interstate Commerce Commission	253	[6] 1567	66	13	May 17, 1950
8	Federal Trade Commission	254	1562	[3] 34	37	May 22, 1950
9	Federal Power Commission	255	1563	[3] 37	36	Do.
10	Securities and Exchange Commission	None	1685			
11	Federal Communications Commissions	256	1564	50	23	May 17, 1950
12	National Labor Relations Board	248	[6] 1516	53	30	May 11, 1950
13	Civil Aeronautics Board	None	1686			
14	Labor Standards Enforcement	None	1546			
15	Alaska and Virgin Islands Public Works	None	1547			
16	Assistance to School Districts and Water Pollution Control	None	1548			
17	Advance Planning and War Public Works	271	1676	[3] 29	43	May 23, 1950
18	Building and Space Management Functions	270	1675	[3] 7	69	Do.
19	Employees' Compensation Functions	None	1549			
20	Statutes at Large and Other Matters	None	1550			
21	Maritime Commission	265	1674	[3] 14	59	May 19, 1950
22	Federal National Mortgage Association	299	1936	[3] 30	43	July 6, 1950
23	Loans for Factory Built Homes	None	1870			
24	RFC to Department of Commerce	290	1868	[4] [7]		Do.
25	National Security Resources Board	None	None			
26	Department of the Treasury [8]	None	1869			
27	Department of Health, Education, and Security [9]	302	1943	[10]	[10]	[10]

[1] Report in 3 separate parts: 1 majority and 2 minority.
[2] Report in 2 separate parts: 1 majority and 1 minority.
[3] Senate failed to pass disapproving resolution by necessary 40 votes, and plan became effective.
[4] Disapproving resolution in House failed of passage by voice vote.
[5] Superseded by Public Law 216, Aug. 10, 1949.
[6] Report contains majority and minority views.
[7] Senate approved resolution by voice vote.
[8] Same as plan No. 1 of 1950, except that Comptroller of the Currency is excluded.
[9] Designed to overcome objections to plan No. 1 of 1949.
[10] House adopted disapproving H. Res. 647 by vote of 249 to 71 on July 10, 1950 (H. Rept. 2320).

Action on reorganization plans, 82d Cong.

REORGANIZATION PLAN OF 1951

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Reconstruction Finance Corporation	76	[1] 213	[2] [3] 41	33	Apr. 13, 1951

REORGANIZATION PLANS OF 1952

1	Bureau of Internal Revenue	285	1259	[2] [4] 37	53	Mar. 13, 1952
2	Post Office Department	317	[5] 1747	56	29	June 18, 1952
3	Bureau of Customs, Treasury Department	331	[5] 1748	51	31	Do.
4	Department of Justice (U.S. marshals)	330	[5] 1749	55	28	Do.
5	District of Columbia	None	1735			

[1] Report contains majority and minority views.
[2] Senate failed to pass disapproving resolution by necessary 49 votes, and plan became effective.
[3] House rejected disapproving H. Res. 142 by vote of 200 to 198 on Mar. 14, 1951 (H. Rept. 188).
[4] Disapproving resolution in House failed of passage by voice vote.
[5] Report in 2 separate parts; 1 majority and 1 minority.

Action on reorganization plans, 83d Cong.

REORGANIZATION PLANS OF 1953

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Department of Health, Education, and Welfare	None	128			
2	Department of Agriculture	100	297	29	46	May 27, 1953
3	Office of Defense Mobilization	None				
4	Department of Justice	None				
5	Export-Import Bank of Washington	None				
6	Department of Defense [1]	None				
7	Foreign Operations Administration	None				
8	U.S. Information Agency	None				
9	Council of Economic Advisers	None				
10	Payments to Air Carriers	None				

REORGANIZATION PLANS OF 1954

1	Foreign Claims Settlement Commission of the United States	None				
2	Liquidation of Certain Affairs of the Reconstruction Fianance Corporation	None				

[1] Referred to the Senate Committee on Armed Services under an agreement entered into between the 2 committees.

Action on reorganization plans, 84th Cong.

REORGANIZATION PLANS OF 1956

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Department of Defense	[1] None	None			
2	Federal Savings and Loan Insurance Corporation	[1] 291	2388			

[1] H. Res. 534, disapproving plan No. 1, and H. Res. 541, disapproving plan No. 2, were approved by the House of Representatives on July 5, 1956, by voice vote. Senate action was therefore unnecessary.

Action on reorganization plans, 85th Cong.

REORGANIZATION PLAN OF 1957

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Abolition of the Reconstruction Finance Corporation [1]	None	None			

REORGANIZATION PLAN OF 1958

1	Consolidation of Federal Civil Defense Administration with Office of Defense Mobilization [2]	297	1717			

[1] Became effective, June 30, 1957.
[2] Became effective, July 1, 1958.

Action on reorganization plans, 86th Cong.

REORGANIZATION PLAN OF 1959

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Transfer of certain functions from the Secretary of the Interior to the Secretary of Agriculture [1] [2]	None	None			

[1] H. Res. 295, disapproving plan, approved by House of Representatives on July 7, 1959.
[2] H.R. 7681, to enact the provisions of plan No. 1 of 1959, with certain amendments, became Public Law 86-509 on June 11, 1960.

Action on reorganization plans, 87th Cong.

REORGANIZATION PLANS OF 1961

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Securities and Exchange Commission—Functions	148	393	[1] 52	38	June 21, 1961
2	Federal Communications Commission—Functions	142	None	([2])		
3	Civil Aeronautics Board—Reorganization	143	477	[3] 33	37	June 29, 1961
4	Federal Trade Commission—Functions	147	478	[4] 31	47	Do.
5	National Labor Relations Board—Reorganization	[5] 158	571	([6])		
6	Federal Home Loan Bank Board—Reorganization	[7] 187 188	None	([8])		
7	Reorganization of maritime functions	186	None	[9] 35	60	Aug. 10, 1961

REORGANIZATION PLANS OF 1962

1	Department of Urban Affairs and Housing	288		([10])		
2	Office of Science and Technology	None		([11])		

[1] House rejected H. Res. 302 by vote of 176 yeas, 212 nays, June 15, 1961 (H. Rept. 509).
[2] House adopted H. Res. 303 by vote of 323 yeas, 77 nays, June 15, 1961 (H. Rept. 446); plan rejected.
[3] House rejected H. Res. 304 by vote of 178 yeas, 213 nays, June 20, 1961 (H. Rept. 510).
[4] House rejected H. Res. 305 by vote of 178 yeas, 221 nays, June 20, 1961 (H. Rept. 511).
[5] With minority views.
[6] House adopted H. Res. 328 by vote of 231 yeas, 179 nays, July 20, 1961 (H. Rept. 576); plan rejected.
[7] Senate resolutions of disapproval not acted upon.
[8] House committee tabled H. Res. 335, July 14, 1961, and plan became effective.
[9] House committee tabled H. Res. 336, July 14, 1961.
[10] House adopted H. Res. 530 by a vote of 264 yeas and 150 nays, Feb. 21, 1962 (H. Rept. 1360); plan rejected.
[11] House rejected H. Res. 595 by a voice vote, May 16, 1962 (H. Rept. 1635), thus in effect approving the plan.

Action on reorganization plans, 88th Cong.

REORGANIZATION PLAN OF 1963

Plan No.	Title	Senate resolution of disapproval No.	S. Rept. No.	Senate vote on resolution of disapproval		
				Yeas	Nays	Date
1	Reorganization of certain functions relating to the Franklin D. Roosevelt Library	None	None	([1])		

[1] No action taken by House on H. Res. 372 (H. Rept. 422), and plan became effective.

○

Calendar No. 143

89TH CONGRESS
1ST SESSION

S. 1135

[Report No. 154]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1965

Mr. MCCLELLAN introduced the following bill; which was read twice and referred to the Committee on Government Operations

APRIL 8, 1965

Reported by Mr. RIBICOFF, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out "June 1, 1965" and inserting in lieu thereof ~~"June 1, 1967"~~ *"June 1, 1969"*.

Amend the title so as to read: "A bill to further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1969."

Calendar No. 143

89TH CONGRESS
1ST SESSION

S. 1135

[Report No. 154]

A BILL

To further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before June 1, 1967.

By Mr. McCLELLAN

FEBRUARY 17, 1965
Read twice and referred to the Committee on Government Operations

APRIL 8, 1965
Reported with amendments

89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 230

CONSIDERATION OF H.R. 4623

APRIL 8, 1965.—Referred to the House Calendar and ordered to be printed

Mr. BOLLING, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 326]

The Committee on Rules, having had under consideration House Resolution 326, report the same to the House with the recommendation that the resolution do pass.

35-008

House Calendar No. 47

89TH CONGRESS
1ST SESSION

H. RES. 326

[Report No. 230]

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 1965

Mr. BOLLING, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4623) further amending the Reorganization Act of 1949. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments

as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

House Calendar No. 47

89TH CONGRESS
1ST SESSION

H. RES. 326

[Report No. 230]

RESOLUTION

Providing for consideration of H.R. 4623, a bill further amending the Reorganization Act of 1949.

By Mr. BOLLING

APRIL 8, 1965

Referred to the House Calendar and ordered to be printed

H. RES. 326

RESOLUTION

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE

(For information only; should not be quoted or cited)

UNITED STATES DEPARTMENT OF AGRICULTURE
Washington, D. C. 20250
Official Business Postage and Fees paid
U. S. Department of Agriculture

Issued April 12, 1965
For actions of April 9, 1965
89th-1st; No. 64

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HIGHLIGHTS: Senate received Appropriations Committee report on proposed closing of certain USDA research stations. Several Senators debated farm labor situation. Senate subcommittee approved northwest flood disaster relief bill. Senate passed bill to extend Reorganization Act. Sen. Mondale urged Federal aid for flood disaster relief in Minn. Sen. McNamara introduced and discussed bill to expand poverty program.

SENATE

1. EDUCATION. By a vote of 73 to 18, passed without amendment H. R. 2362, the proposed Elementary and Secondary Education Act of 1965 (pp. 7343-71, 7400-02, 7405-6, 7410-52). This bill will now be sent to the President. The bill extends for two years, until June 30, 1968, authorization for Federal assistance to schools in federally impacted areas.

2. REORGANIZATION. Passed as reported S. 1135, to extend until Dec. 31, 1968, the authority of the President to transmit reorganization plans to the Congress under the Reorganization Act of 1949. pp. 7498-9

3. MANPOWER. Received and agreed to the conference report on S. 974, to extend the Manpower Development and Training Act until June 30, 1969, and to transfer the training provisions of the Area Redevelopment Act to this Act. pp. 7402-5

4. RESEARCH. Sen. Holland submitted the report of the Appropriations Committee on the results of its investigation of the proposed elimination of certain research stations and lines of research by the Department. The report recommends that the Secretary of Agriculture establish a Research Review Committee "to examine fully each and every line of the agricultural research conducted by the Department and by the State experiment stations," and to make a report on the results of the study to the Appropriations Committee within the next 60 days. (S. Rept. 156) pp. 7452-8

5. FARM LABOR. Several Senators debated the farm labor situation and inserted items on the matter. pp. 7371-98

6. DISASTER RELIEF. The Subcommittee on Public Roads of the Public Works Committee approved for full committee consideration S. 327, to provide Federal assistance to Ore., Wash., Calif., and Idaho for reconstruction of areas damaged by recent floods (amended so as to include the text of S. 1638, to increase the limitation of emergency relief on repair of highways). p. D286

   Sen. Mondale urged Federal agencies, including this Department, to provide disaster relief assistance to Minn. as a result of recent flooding in the State. pp. 7476-7

7. WATER RESOURCES. Senate conferees were appointed on S. 21, the proposed Water Resources Planning Act (pp. 7407-10). House conferees have not yet been appointed.

8. TEXTILES. The Commerce Committee reported with amendment S. 1129, to amend the Textile Fiber Products Identification Act to permit the listing on labels of certain fibers constituting less than 5 percent of a textile fiber product (S. Rept. 161). p. 7458

9. PERSONNEL. The Post Office and Civil Service Committee reported without amendment H. R. 2594, to clarify the application of retirement increase legislation to certain retired Federal employees (S. Rept. 158). p. 7458

10. NATIONAL PARKS. Passed as reported S. 339, to provide for the establishment of the Agate Fossil Beds National Monument, Nebr. pp. 7499-7500

11. USER CHARGES; SOIL CONSERVATION. Sen. Young, N. Dak., inserted an article critical of the proposed user charge on SCS technical assistance to farmers and ranchers. pp. 7480-1

12. CONSERVATION. Sen. McGovern inserted an address by Assistant Secretary of the Interior Holum requiring water resource development and conservation activities. pp. 7494-6

13. ADJOURNED until Tues., Apr. 13. p. 7503

None of this is to suggest that such extremists be denied the use of the school auditorium, upon payment of the proper fee. The rights of free speech and civil liberties cannot be granted to only those with whom we agree. They must be granted even to those whose fanaticism poses a threat to those very rights.

But we hope that no one misinterprets our attitude as one of cordial hospitality to these unwelcome visitors.

FEDERAL INTERFERENCE IN HOSPITAL AND MEDICAL PRACTICE

Mr. MOSS. Mr. President, the bill recently reported by the Ways and Means Committee of the House of Representatives, which includes provision for hospital insurance for the elderly, is different in a number of respects from the proposals which we have been discussing and debating for the past few years. Although there are some improvements in this bill which soon will be before us for consideration, there are some defects also which should receive the careful attention of the Senate.

One of these defects, which perhaps would not appear on casual reading to be of major significance, is a defect which would radically change one of the basic concepts of the legislation as introduced by the Senator from New Mexico [Mr. ANDERSON]. I refer to the exclusion from the allowable cost of hospital services of the cost of services of certain medical specialists which usually are considered necessary and customary hospital services. These specialists are pathologists and radiologists and in some circumstances anestheologists and phyciatrists. The bill as now written provides that the costs of these professional services may not be paid as a part of hospital expense as is now customary, but must be billed separately by the physician on a fee basis. The payment of these fees is then covered under the voluntary supplementary insurance section.

We are indebted to the senior Senator from Illinois [Mr. DOUGLAS] for bringing the implications of this exclusion to the attention of the Senate in a most illuminating speech which he delivered in this Chamber last week. I would like to compliment the Senator from Illinois on his cogent and valuable contribution to the Senate's consideration of this measure. I found his presentation most persuasive that such an exclusion is inconsistent with common practice in other hospital payment programs, both public and private; that it would tend to accelerate inflation in hospital and medical costs; and would be seriously disruptive to accepted practices in hospitals throughout the country.

Mr. President, it is this last aspect of the results of this unfortunate exclusion in the hospital insurance program as it is now before the other body that I wish to emphasize.

In the past 4 years during which we have been discussing and debating the legislative proposal which we all associate with the name of the distinguished senior Senator from New Mexico, I have received letters from citizens in my State every day commenting on this bill. Many have supported it, but as we all know there has been a great deal of misunderstanding about the Anderson bill and a great many have written to oppose it. The No. 1 concern of my constitutents who have written to express their misgivings about this bill has been that it might lead to some Federal interference in medical or hospital practice. I have written to each of those who raised this point and assured them that there was nothing in the proposal which need effect the relationships of doctors and hospitals, and that there was specific prohibition in the bill against any Federal interference in hospital or medical practice.

Mr. President, my response to my constituents was absolutely true until the moment the exclusion of pathologists, radiologists, anesthesiologists, and physiatrists' services in hospitals was written into the bill which we will be considering. Although the section prohibiting Federal interference remains in the bill, if this arbitrary exclusion from allowable hospital costs also remains in the bill, we will be interfering directly with customary hospital practice and with relationships of doctors and hospitals on a massive scale.

Why will the exclusion of the services of pathologists and radiologists from the cost of hospital services result in Federal interference? Let us look, for example, at the effect on the pathologist and the hospital laboratory department.

A general hospital large enough to afford and utilize the services of a full-time pathologist nearly always has one of these medical specialists on its staff. A smaller hospital may engage a pathologist part time, and such a pathologist may have arrangements with two or three small hospitals. The pathologist usually is in charge of the laboratory department of the hospital and also renders highly specialized medical services within the hospital framework.

There is a variety of contractual arrangements in effect between hospitals and pathologists governing the manner of their compensation, but the most common provide for salary or for a percentage of revenue of the laboratory department. Under either of these arrangements, the pathologist's compensation is treated as a cost of the laboratory department and is part of the hospital charge to the patient. The direct billing of fees to inpatients by a hospital pathologist is virtually never done. The Washington office of the American Hospital Association advises that such situations are so rare they cannot recall having heard of such a case.

Mr. President, we must bear in mind that these thousands of doctors across the Nation have freely entered into the arrangements they have with the hospitals in which they practice. Now it is proposed that the Congress presume to tell these doctors that the manner in which they choose to practice is not acceptable; that we insist upon a particular type of arrangement with their hospitals. If we pass this bill with the exclusion of these hospital costs and the consequent requirement for direct fee billing by hospital pathologists, hospitals across the Nation will be obliged to renegotiate their contracts with their pathologists. Moreover, these will not be free negotiations as they have been in the past because the rules will have been laid down in advance by the Federal Government. Is this not intereference in the relationships between doctors and hospitals?

When these negotiations are concluded the hospitals will then have to reorganize their business office procedures for accounting and billing and install new systems to segregate and account separately for those laboratory charges which are allowable under the basic hospitalization program and the pathologists services which must be covered under a separate program. Will we then be able to say that we have not interfered in hospital management; that our program has not burdened the hospitals with red-tape? I think we will not.

Mr. President, so far I have been talking only about pathologists, but the same points can be made concerning the effect of this provision on radiologists in hospital practice. Agreements freely arrived at will become inoperable and have to be renegotiated, and business practices will have to be altered to meet the requirements of the Federal program. Radiologists no longer will be compensated through the hospital for their services to elderly patients and to make up this loss they will have to send out their own bills directly to the patients.

I have seen an estimate made by the director of a major hospital in the East that radiologists on that hospital staff would have to issue about 3,000 separate bills per month. Of course, they would have to set up accounting records in their own offices which they do not now need. They would have to send followup bills and try to collect unpaid accounts. Naturally, they would have to hire clerical staff to do all of this for them. Whether the additional personnel needed would be employed by the hospital or would be on the radiologist's personal payroll I am sure would become a bone of contention between them. But in either case the patient ultimately would pay the cost.

Mr. President, unlike the case of the pathologists, many radiologists in hospital practice have agreements with their hospitals which provide for their compensation in whole or in part from fees billed to patients. On the other hand, many, perhaps a majority, do not follow this practice.

The Senator from Utah would not presume to say which method of compensating medical specialists in hospital practice is the best. There probably is no one best way because circumstances differ from one hospital and community to another. The best ways are to be found by the doctors involved and local hospital officials freely working out mutually satisfactory agreements. I do not think we can possibly justify a Federal requirement that doctors conform to one type of arrangement as a condition for receiving compensation.

Mr. President, it seems to me that the proper solution has been suggested by the senior Senator from Illinois in his

perceptive discussion of this problem. It is a solution as simple and straightforward as it is sensible and effective. Let us recognize that there are many different ways of compensating medical specialists whose services are rendered in the hospital framework and let us enact a program which will conform to whatever arrangements are in effect in the individual hospital. If in a given hospital the cost of compensation of these specialists is part of the hospital bill, it should be covered by the basic hospitalization insurance program. In hospitals where local practice is for these specialists to bill separately for their fees, these can be covered under the voluntary supplementary plan. This would leave doctors and hospitals free to work out their own relationships unhindered by Federal procedural requirements.

I urge the Finance Committee of the Senate to give careful and favorable consideration to this solution offered by our colleague from Illinois. Then we will again be able to go to our constituents and say, sincerely and truthfully, that we have enacted a program which deals only with the problem of financing health care of the elderly; a program which leans over backward to avoid any kind of interference with hospital practice and private medicine. I know my constituents desire this kind of program and I am sure that is the desire across the Nation.

SELF-ANALYSIS AND GRADUAL TRANSFORMATION OF THE ROMAN CATHOLIC CHURCH

Mr. PELL. Mr. President, I was much interested in an article—written by James Reston, and published in this morning's New York Times—pointing out that the Roman Catholic Church is engaged in a truly historic process of self-examination and development in its efforts to correlate the increasing tempo of urbanization and industrial advance throughout our world with the past mores and habits of a predominantly rural society. The Catholic Church today has taken a lead in the ecumenical movement and in the extension of its dialog with those of other faiths and religions throughout the world. Its knowledge and awareness of what is going on in the world today is immense, and its objectives of a politically free and poverty free world are similar to our own American national objectives in today's world. It seems a pity that the exchange of ideas, information, and views between the Roman Catholic Church and our own country should not be made as free and open as is possible. For this reason, I ask unanimous consent that Mr. Reston's article be printed in the CONGRESSIONAL RECORD, as being of possible interest to my colleagues.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 9, 1965]

ROME: THE UNITED STATES AND THE VATICAN

(By James Reston)

ROME, April 8.—The most exciting movement in Europe today is the self-analysis and gradual transformation of the Roman Catholic Church.

The contrast with most of the other trends of thought on the Continent is striking. The exuberant movement toward European political union has clearly slowed down. The preoccupation with national political and economic problems everywhere else is obvious. For the time being, and probably for the rest of the year, smaller issues are dominating the larger perspectives of European politics.

VATICAN THINKING

But the Vatican is different. It is thinking in continents and looking forward to the end of the century. It is determined to be relevant to a world in which the human race is expanding in size and knowledge, moving rapidly off the land into vast urban communities, and changing under the impact of the scientific revolution.

There is scarcely an issue of world politics today that does not now concern the church and provoke its influential comment.

In the light of this, it is odd that the United States is the only one of the major non-Communist nations that still does not have formal diplomatic representation at the Vatican.

President Franklin D. Roosevelt dealt with this question early in his administration. He sent Myron Taylor as his personal representative to the Vatican, and while there was some complaining in the United States at the time that this somehow involved recognition and therefore approval of the Roman Catholic Church, this was a minor view that was overborne by the practical advantages of the move.

It is easy to overestimate the amount of social and political information that is available at the Vatican. It is like a library without an index—a storehouse of information, but hard to sort out, and this requires hard and diligent work.

Nevertheless, it is a listening post of great potential. The embassies know a great deal about what goes on in the capitals of the world, but the churches know much more about what is going on in the small towns and the countryside. This is particularly true of the Roman Catholic churches, for example, in Vietnam, in Cuba, in Eastern Europe, and in many parts of Africa and Asia.

Even the Spanish Government of Francisco Franco occassionaliy requires the help of the Vatican to deal with the Catholic Church in Spain. Spain is now highly interested in developing its increasingly lucrative tourist trade, but the Roman Catholic hierarchy in Spain resists the building of Protestant churches in that country and the Spanish Government needs the intercession of the Vatican to deal with the problem.

THE PRIVATE TALKS

Apparently there have recentiy been some private talks on restoring the U.S. diplomatic link with the church. Ironicaliy, it is reported that one or two influential leaders of the Catholic Church in the United States are not enthusiastic about the move.

President Kennedy was not able to deal with this question when he was in the White House. As a Roman Catholic himself, he was harried over the religious issue during his campaign for the Presidency and committed himself before the election not to send a representative to the Vatican. President Johnson, however, is free to deal with the question objectively, and has shown some interest in meeting with Pope Paul either here or in the United States.

The Catholic Church itself is working toward greater understanding and communication with all the other churches in the world. It is avoiding the conservatism and separatism of the past, and inviting all institutions to work together on common problems. It has estabiished committees of inquiry into such controversial religious questions as birth control and within the coming year may redefine church policy on this critical question.

U.S. officials are being told in country after country that political leaders cannot hope to deal with the mounting population problem, no matter how much foreign aid they get from Washington, unless they get the sympathetic understanding of the Roman Catholic Church.

CLOSER TIES

For the United States not to have the closest possibie diplomatic relations with the Vatican at such a time of transition both in the world and in the church seems to many observers a misfortune.

It is known that the question has recently been raised with President Johnson privately and a decision is hoped for here during the next few months.

AMENDMENT TO REORGANIZATION ACT OF 1949, AS AMENDED

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 143, Senate bill 1135.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1135) to amend the Reorganization Act of 1949, as amended, so that such act will apply to reorganization plans tranmitted to the Congress at any time before June 1, 1967.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Government Operations with amendments in line 7, after the word "thereof", to strike out "June 1, 1967" and insert "June 1, 1969,"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out "June 1, 1965" and inserting in lieu thereof "June 1, 1969".

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the committee amendment be agreed to en bloc and that the bill as amended be treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIBICOFF. Mr. President, S. 1135 will extend for an additional 4 years the authority of the President to transmit reorganization plans to the Congress. His current authority expires this June 30. He had requested this extension on a permanent basis. The committee concluded that the 4-year time limit was more appropriate considering the constitutional question of so broad a delegation of our legislative powers and responsibility. By extending the President's authority this period of time we feel he will have ample opportunity to transmit the reorganization plans he feels are needed.

Mr. President, it is not often that a bill seven lines in length would present a

fundamental constitutional question to the Senate for consideration. Yet this is the case with regard to S. 1135 now before us.

The wisdom of the framers of our Constitution gave us a Federal Government that is grounded on two important doctrines—first, that the Federal Government is one of enumerated powers, and, second, that legislative power may not be delegated. It is the second of these doctrines that is at issue today.

On February 3 the President transmitted to Congress a message requesting authority of a permanent nature to submit reorganization plans to the Congress under the terms and limitations of the Reorganization Act of 1949, as amended. As chairman of the Subcommittee on Executive Reorganization of the Senate Committee on Government Operations I introduced S. 1134, carrying out that request. The chairman of the full committee, the Senator from Arkansas [Mr. McCLELLAN] who has followed this subject with keen interest and insight over the years, introduced S. 1135 which would not deny to the President the right to transmit reorganization plans to Congress but would restrict to a 2-year period his authority to do so. The Senator from Arkansas [Mr. McCLELLAN] pointed out that since enactment of the basic reorganization statute in 1949, the Committee on Government Operations, as well as its predecessor, the Committee on Expenditures in the Executive Departments, has taken the position that the Congress should neither surrender nor abrogate its legislative jurisdiction over matters of such significance on a permanent basis.

The question before the committee was simply whether to grant the President's request and in so doing cast a cloud over its constitutional power to do so, or, as was decided, extend the President's authority to transmit reorganization plans as Congress has traditionally done in the past with a fixed time limit. The committee agreed to a 4-year extension. In that way, the President is given ample time through his current term of office to develop and transmit the reorganization proposals he feels are needed to create the kind of government he described as * * * "modern in structure, efficient in action, and ready for any emergency."

The committee and, I am sure, the Senate wants to cooperate and assist the President in the realization of that goal. But it cannot do so to the extent that it violates one of the essential doctrines of our constitutional system.

Mr. President, the Senator from Washington [Mr. JACKSON] has suggested that the time period be further limited to make it coterminus with the end of the President's present term of office. At the request of the Senator from Washington, I send to the desk an amendment to limit the extension of the authority to December 31, 1968.

The PRESIDING OFFICER. The amendment offered by the Senator from Connecticut on behalf of the Senator from Washington will be stated.

The LEGISLATIVE CLERK. On line 7 it is proposed to strike out "June 1, 1969," and insert in lieu there "December 31, 1968."

Mr. RIBICOFF. Mr. President, I ask the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 154), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

S. 1135, as amended by the committee, would extend for a period of 4 years the authority of the President, under the Reorganization Act of 1949, as amended, to submit reorganization plans to the Congress proposing reorganizations in the executive branch of the Government.

The Reorganization Act of 1949, as amended, authorizes the President to submit reorganization plans to the Congress in order to accomplish certain stated purposes. Section 2(a) sets forth these purposes and places certain responsibilities upon the President for determining appropriate action to accomplish them; section 2(b) states congressional policy with respect to these purposes; section 3 lists the types of reorganizations which are authorized; section 4 specifies certain provisions which a reorganization plan may or must contain; section 5 contains limitations with respect to reorganizations which may be accomplished and provides an expiration date for the authority to submit plans; and section 6 provides that such plans shall become effective unless they are disapproved by either House of the Congress by a majority of those present and voting, within 60 days of continuous session of the Congress, following the date of their submission. Under existing law, the authority of the President to submit such plans will expire on June 1, 1965. S. 1135, as amended by the committee, would extend this authority until June 1, 1969.

The title was amended so as to read: "A bill to further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before December 31, 1968."

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MORSE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AGATE FOSSIL BEDS NATIONAL MONUMENT, NEBR.

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 139, Senate bill 339.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 339) to provide for the establishment of the Agate Fossil Beds National Monument in the State of Nebraska, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to; and the Senate preceded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs, with amendments on page 2, line 15, after the word "Monument.", to strike out "Establishment of the national monument and any adjustment of its boundaries shall be effectuated by publication of notice thereof in the Federal Register when the Secretary finds that lands constituting an initially administrable unit are in Federal ownership." and insert "When the Secretary finds that lands constituting an administrable unit are in Federal ownership, he shall establish such national monument by publication of notice thereof in the Federal Register, and any subsequent adjustment of its boundaries shall be effectuated in the same manner."; and, on page 3, after line 5, to strike out:

SEC. 4. There is hereby authorized to be appropriated not more than $275,000 for the acquisition of land and interests in lands pursuant to this Act.

And, in lieu thereof, to insert:

SEC. 4. There is hereby authorized to be appropriated not more than $315,000 for the acquisition of land and interests in land pursuant to this Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve for the benefit and enjoyment of present and future generations the outstanding paleontological sites known as the Agate Springs Fossil Quarries, and nearby related geological phenomena, to provide a center for continuing paleontological research and for the display and interpretation of the scientific specimens uncovered at such sites, and to facilitate the protection and exhibition of a valuable collection of Indian artifacts and relics that are representative of an important phase of Indian history, the Secretary of the Interior is authorized to acquire by donation, or by purchase with donated or appropriated funds, or otherwise, title or a lesser interest in not more than 3,150 acres of land in township 28 north, range 55 west, 6th principal meridian, Sioux County, Nebraska, for inclusion in the Agate Fossil Beds National Monument in accordance with the boundary designation made pursuant to section 2 hereof, which boundary may include such right-of-way as is needed for a road between the Stenomylus Quarry site, and the monument lands lying in section 3 or 10 of said township and range.

SEC. 2. Within the acreage limitation of section 1, the Secretary may designate and adjust the boundaries of Agate Fossil Beds National Monument. When the Secretary finds that lands constituting an administrable unit are in Federal ownership, he shall establish such national monument by publication of notice thereof in the Federal Register, and any subsequent adjustment of its boundaries shall be effectuated in the same manner.

SEC. 3. The Agate Fossil Beds National Monument shall be administered by the Secretary of the Interior pursuant to the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented.

SEC. 4. There is hereby authorized to be appropriated not more than $315,000 for the acquisition of land and interests in land pursuant to this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered and agreed to en bloc.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 150), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

HISTORY AND DESCRIPTION

The major purpose of this bill is to preserve for the Nation the unique paleontological deposits located on the Agate Springs Ranch in western Nebraska which was owned by the late Dr. Harold J. Cook. These deposits have been described by the paleontologist, the late Henry Fairfield Osborn, as the most remarkable deposit of mammalian remains of the Tertiary age ever found anywhere in the world. Scientific research has been conducted in the area since 1871. Scientists from the Carnegie Institute, the American Museum of Natural History, the Chicago Natural History Museum, the Smithsonian Institution, the Colorado Museum of Natural History, Amherst College, the universities of Nebraska, Chicago, Kansas, Michigan, Princeton, and Yale, and many other scientific institutions have worked and studied at the site.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MORSE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INCREASE IN AMOUNTS AUTHORIZED FOR INDIAN ADULT VOCATIONAL EDUCATION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 140, Senate bill 1570.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1570) to increase the amounts authorized for Indian adult vocational education.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I move to discharge the Committee on Interior and Insular Affairs from further consideration of H.R. 4778, a companion bill, and that the Senate proceed to consider the House bill.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill to increase the amounts authorized for Indian adult vocational education.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to; and the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be offered, the question is on the third reading of the bill.

The bill (H.R. 4778) was ordered to be read the third time, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 151), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 4778 is to amend the act of August 3, 1956 (70 Stat. 986, 25 U.S.C. 309), entitled "An act relative to employment for certain adult Indians on or near Indian reservations," by increasing the amount authorized to be appropriated for the program from $12 to $15 million annually.

This legislation is necessary in order to accommodate the large number of Indians who are seeking enrollment under the 1956 act. The response of Indians to the opportunities afforded them in vocational courses and on-the-job training has been most favorable. From its inception through 1964, 10,000 persons have enrolled in various vocational programs throughout the United States. As of December 31, 1964, 5,576 Indians had completed training under this program, and 1,677 were still in training. In addition to the institutional trainees, there have been 3,243 persons placed in on-the-job training. Another 4,875 heads of families and single individuals have applied for training and are awaiting assignment. More and more of the younger Indians are completing high school and will become available for these training programs in the near future.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MORSE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I move that Senate bill 1570 be indefinitely postponed.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

DISPOSITION OF JUDGMENT FUNDS ON DEPOSIT TO CREDIT OF THE QUINAULT TRIBE OF INDIANS

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 141, Senate bill 702.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 702) to provide for the disposition of judgment funds on deposit to the credit of the Quinault Tribe of Indians.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to; and the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Quinaielt Tribe of Indians that were appropriated by the Act of January 6, 1964 (77 Stat. 857), to pay a judgment by the Indian Claims Commission in docket numbered 242, and the interest thereon, less litigation expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any portion of such funds that may be distributed as per capita payments to the members of the tribe shall not be subject to Federal or State income tax.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 152), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of S. 702 is to authorize the disposition of a judgment to the credit of the Quinaielt Tribe of Indians, Washington.

The Indian Claims Commission has awarded the Quinaielt Indians $205,172.40 in settlement of the claim in docket 242.

The Quinaielt General Council, through its business committee, has proposed tribal programing, in consultation with the Bureau of Indian Affairs, for the use of the judgment funds. Projects to be initiated through use of the funds include the establishment of community facilities in cooperation with the U.S. Public Health Service, the improvement of fisheries resources, and the development of tourism and recreation potential.

The proposed legislation will permit the Quinaielt Business Committee, subject to the approval of the Secretary of the Interior, to decide how the judgment funds will be programed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MORSE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ASSESSING OF INDIAN TRUST AND RESTRICTED LANDS WITHIN LUMMI INDIAN DIKING PROJECT ON LUMMI INDIAN RESERVATON, WASH.

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 142, Senate bill 795.

The PRESIDING OFFICER. The bill will be stated by title.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
Washington, D. C. 20250
Official Business Postage and Fees Paid
U. S. Department of Agriculture

OFFICE OF BUDGET AND FINANCE
(For information only; should not be quoted or cited)

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89th-1st; No. 100

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HIGHLIGHTS: House passed bill to continue Reorganization Act. Rep. Nelsen reported new claims of "political arm twisting" in REA. Rep. Sweeney spoke in support of public-works economic-development bill. Rep. Cleveland recommended his humane-treatment research bill. Several Reps. discussed farm-labor shortage in Calif. Senate reported Treasury-Post Office-Executive Office appropriation bill. Sen. Anderson introduced and discussed cotton bill.

HOUSE

1. REORGANIZATION. Passed without amendment S. 1135, to extend to December 31, 1968, the President's power to submit reorganization plans. This bill will now be sent to the President. pp. 11942-3, 11945-50

2. PERSONNEL. Rep. Nelsen inserted an article clairing new "political arm twisters" in REA and inserted his correspondence on the matter with the Civil Service Commission and the Justice Department. pp. 11943-5

Rep. Olsen, Mont., recommended legislation to encourage early retirement. pp. 12003-4

Received from the Civil Service Commission a proposed bill to provide for payment of travel cost for applicants invited by a department to visit it for purposes connected with employment; to Government Operations Committee. p. 12031

The Post Office and Civil Service Committee voted to report (but did not actually report) H. R. 242, to extend the apportionment requirement to temporary summer employment. p. D479

3. ECONOMIC POLICY. Rep. Vanik criticized the recent speech by Federal Reserve Chairman Martin in which he had raised the possibility of a recession. p.11965

4. POLLUTION. Rep. McCarthy stated that industry should share part of the responsibility in cleaning up air and water pollution and waste treatment. p. 11966

5. TRANSPORTATION. Rep. Dulski said a proposed increase in Federal taxes alarms the trucking industry and inserted a letter from the American Trucking Association. pp. 12011-3

6. PUBLIC WORKS; ECONOMIC DEVELOPMENT. Rep. Sweeney spoke in favor of H. R. 6991, the public-works economic-development bill, and commended ARA's achievements. pp. 11968-70

7. COTTON. Rep. Landrum announced plans for construction of a new textile mill in Jefferson, Ga., and said this shows faith in continuation of the one-price cotton system. pp. 11973-4

8. RESEARCH. Rep. Cleveland spoke in favor of H. R. 5647, to provide for humane treatment of laboratory animals. p. 11974

9. BUDGETING. Rep. Curtis spoke in favor of legislation to "modernize congressional review over the budgetary process. pp. 11984-7

10. FARM LABOR. Rep. Talcott and others discussed the farm-labor situation in Calif. and whether provision should be made for Mexican labor. pp. 11990-98

11. OPINION POLL. Rep. Ashbrook inserted the results of a poll of his constituent regarding their opinion on various issues. p. 12009

12. FOREIGN AID. Received from the President proposed amendments to the request for appropriations for the mutual defense and development programs (H. Doc. 197). p. 12031

Received the report of the International Bank for Reconstruction and Development on assistance to private enterprise through the International Finance Corporation, etc. (H. Doc. 198).

13. APPROPRIATIONS. The Appropriations Committee reported the legislative appropriation bill, H. R. 8775 (H. Rept. 442). pp. 12031-2

14. WATERSHEDS. Received from the Budget Bureau reports on plans for works of improvement under the Watershed Protection and Flood Prevention Act for Crooked Creek, Ala.; Haney Creek, Ark.; Upper Crooked Creek, Ark.; Muddy Fork of Silver Creek, Ind.; Cub Creek, Nebr.; Assumpink Creek, N. J.; St. Thomas Lodema, N. Dak; and Buffalo Creek, Ohio; to Agriculture Committee. Also Lower Little Tallapoosa River, Ga.; Uncle Tom Creek, Okla.; Wilson Spring Creek, Tenn.; Attoyac Bayou, Tex.; Castleman Creek, Tex.; Donahoe Creek, Tex.; to Public Works Committee. p. 12031

ver production, because for many years we have supplied silver for our coinage out of large Treasury stocks, which still amount to 1 billion troy ounces.

But—and this is the crux of the matter—at the present pace, this stock cannot last even as much as 3 years. We would them be shorn of our ability to maintain the coinage and, if there were no alternative to our present silver coinage, the Nation would be faced with a chronic coin shortage. That is why definitive action is necessary at this session of the Congress.

PROTECTION OF THE COINAGE

It is necessary for the U.S. Government to have large stocks of silver in addition to the quantity needed for coinage.

We need these stocks because our silver coins in circulation must be protected from hoarding or destruction. Protection of the silver coinage will continue to be a necessity since we plan for it to continue to circulate alongside the new coins. Our silver coins are protected by the fact that the Government stands ready to sell silver bullion from its stocks at $1.29 a troy ounce. This keeps the price of silver, as a commodity, from rising above the face value of our coins. This, in turn, makes hoarding or melting of the silver coinage unprofitable.

It is an additional protection for the existing coinage that I am requesting standby authority to institute controls over the melting, treating or export of U.S. coins.

It may be asked why we seek standby control authority since we retain a large stock of silver with which to protect our silver coins through operations in the silver market.

The answer is clear. Given the magnitudes by which demand for silver is outrunning new production, we must consider the possibility, however unlikely, that the silver stock we possess could itself require the support and protection that would be afforded by authority to forbid melting and export of our coins.

We believe our present stocks of silver to be adequate, once the large present drains from coinage are greatly reduced, to meet any foreseeable requirements for an indefinite period. However, prompt action on a new coinage will help us protect the silver coinage by freeing our silver reserves for redemption of silver certificates at $1.29 per ounce. Thus, we can assure that no incentive will be created for hoarding our present coins in anticipation of a higher price for their silver content.

There is the opposite, although in all likelihood short run, possibility that a fall in the price of silver might result from the enactment of this legislation largely removing silver from our subsidiary coin. It is for the purpose of protecting silver producers from a precipitate drop in the price of silver resulting from the action of the Government that I am requesting authority for the Secretary of the Treasury to purchase any newly mined domestic silver offered to him, at the price of $1.25 per troy ounce.

THE SAN FRANCISCO ASSAY OFFICE

Coinage operations at the San Francisco Mint were ended in 1955. Legislation converting the mint to the San Francisco Assay Office was passed in 1962. As part of our efforts to overcome the coin shortage of the past year, coin blanks have been cut and annealed at the San Francisco Assay Office. Present law forbids full minting there. However, we will temporarily need the facilities of this plant to move into large quantity production of the new coinage and to continue production of existing coins until enough new small money is made to make certain we have adequate supplies. Consequently, I am asking for authority to reactivate minting operations at San Francisco on a temporary basis.

A new, fully modern mint is to be built in Philadelphia. However, it cannot be completed and in operation before late 1967. It is our expectation that when the new Philadelphia Mint's capacity is added to that of the Denver Mint, our coinage requirements can be met efficiently and economically. Consequently, no more than temporary authority to mint coins in San Francisco is recommended in the draft legislation I am sending to you.

WHY COMPOSITE COINS ARE RECOMMENDED

We have no choice but to eliminate silver, for the most part, from our subsidiary coinage. The question was: What would be the best alternative? After very thorough consideration of all aspects of this highly complex problem, we have settled upon the two types of composite, or clad, coins I have already described. These are 10-cent and 25-cent pieces with cupronickel alloy faces bonded to a solid copper core, and a new half dollar with outer and inner layers of differing silver-copper alloys.

This type of coin was found to be necessary if the new coinage is to be compatible with the existing silver coinage in all the 12 million coin-operated devices in use in the United States.

The convenience of using coins in automatic merchandising and service devices is a fact that, like the coins in our pockets and in our store tills, we take for granted. But if our coinage were suddenly to be such that it would not work in coin-operated devices, the public would be subjected to very great inconvenience and serious losses would occur to business with harmful effects upon employment.

The automatic merchandising industry is a large and growing part of our national economy. Last year, $3½ billion worth of consumer items were sold through 3½ million of these machines. On more than 30 billion separate occasions a consumer made a purchase by putting a coin in a machine. In growing numbers, factories, hospitals, and other places now depend upon automatic vending for the service of goods. A million and a half people now rely upon coin-controlled vending for at least one meal a day. The use of coin-operated devices is expanding rapidly, not only in merchandise vending, but also in a number of other services.

Six million of our coin-operated devices, including nearly all vending machines, have selectors set to reject coins or imitations of coins that do not have the electrical properties of our existing silver money. Highly selective rejectors are a necessity in these machines if they are to be a low-cost source of food and other goods and services. Otherwise, fraudulent use would soon make them costly.

The sensors in these machines are set to accept or reject coins on the basis of the electrical properties of our traditional coins, which have a high proportion of silver. To be compatible in operation with our existing coinage, therefore, our new coins must duplicate the electric properties of a coin that is 90-percent silver. No single acceptable metal or alloy does so. The composite coins, made of layers of differing metals and alloys, that I am asking the Congress to approve, are coins made to order to duplicate the electrical properties of coins with a high silver content. They are the only practical alternatives we have discovered to our present coinage.

Selectors exist that can handle coins with the widely varying electrical properties of, say, nearly pure silver and nearly pure nickel. But that is not enough. When the selectors are set to accept coins with greatly differing electrical properties, the selectivity of the mechanism declines and they will accept wrong coins and imitations. Unless the coins in use have very similar electrical properties, the coin-operated machines become subject to a high degree of fraudulent use. This would be costly to all concerned.

The future may bring selectors of a different kind able to accept coins of widely varying electrical properties while at the same time rejecting imitations and wrong coins. They are not available now. When and if they become available, our new coinage will work in them. On the other hand, if we now chose an incompatible coinage, there would be delays and interruptions lasting a year to 3 years in the services of these machines. This would impose heavy inconveniences upon the public and would cause business and employment losses in a large and growing industry.

In view of these considerations of public interest, we have concluded that our new coinage must without fail be able to carry out the technical merchandising functions of a modern coinage, working alongside our existing silver coinage. The new coins that I am recommending to you do this, and do it well, because they were specifically designed for the task.

The new half dollar was designed with the strong desire in mind of many Americans to retain some silver in our everyday coinage. We believe that by eliminating silver from use in the dime and the quarter, we will have enough silver to carry out market operations in protection of our existing silver coinage—and to make a half dollar of 40 percent silver content. It is clear and unmistakable that we would not have enough silver to extend this to the dime

and quarter: they are heavily used, indispensable coins that we must have at all times in large quantity. We are convinced that we can include a 40-percent silver half dollar in the new coinage, but we cannot safely go beyond that. As a precaution, we intend to concentrate at first on getting out large quantities of the new quarter and dime before we embark upon quantity production of the new half dollar.

THE JOINT COMMISSION ON THE COINAGE

We believe the recommendations being made for a new coinage are sound and durable and in the best public interest. However, the installation of a new coinage is a matter so intimately affecting the life of every citizen, and so delicately related to the Nation's commerce, that it is impossible to be certain in advance that all problems have been foreseen, even by such a long and arduous process of research as has gone into the selection of the proposed new coins.

Consequently, I am including among my recommendations the proposal for a Joint Commission on the Coinage. It will be composed of the four officers of the executive branch most directly concerned with matters affected by the coinage—the Secretary of the Treasury, the Secretary of Commerce, the Director of the Budget Bureau, and the Director of the Mint; of four members representing the public interest, to be appointed by the President; of the chairmen and ranking members of the Banking and Currency Committees of the House and the Senate; of one Member each from the two Houses of the Congress, to be appointed by the Vice President and the Speaker of the House. The Commission will be appointed soon after the new coinage is issued. It will study such matters as new technological developments, the supply of various metals, and the future of the silver dollar. It will report as to the time and circumstances in which the Government should cease to maintain the price of silver. It will be directed to advise the President, the Congress, and the Secretary of the Treasury on the results of its studies.

THE COINAGE—CURRENT AND PROSPECTIVE

I am pleased to report to the Congress substantial progress toward overcoming the coin shortage the Nation has been experiencing. Greatly increased minting has eliminated the shortage of pennies and of nickels. We are still somewhat on the short side of the demand for dimes and quarters, but this deficit is rapidly being overtaken. A severe shortage of the half dollar continues, due to the popularity of the new 50-cent pieces bearing the image of President Kennedy.

I want to emphasize that we will continue to make the existing coins while the new ones come into full production, and that we contemplate side-by-side circulation of the old and new coins for the indefinite future. There is no reason for hoarding the silver coinage we now use, because there is no reason for it to disappear.

We are gearing up for maximum production of the new coins as soon as they are authorized by the Congress. Supply of the materials for them is assured. Both copper and nickel are economical and available in North America. Their usage in coins will not add enough to overall employment of these metals to create supply or price problems.

In the first year after new coins are authorized, we expect to make 3½ billion pieces of the new subsidiary coins. That is a billion and a half more pieces than will be made of the corresponding silver coins in the current fiscal year.

In the second year after authorization of the new coinage, we expect to be able to double the first year's output of the new coins, reaching a production total of 7 billion pieces.

We expect in this way to avoid any new coin shortage in the transition to production of the new coins, and within a period of less than 3 years to reach a point at which we could if necessary meet total coinage needs out of production of the new coins.

I am satisfied that, taking into account all of the various factors involved in this complex problem, the recommendations that I am making to you are sound and right. Your early and favorable action upon the proposed legislation will make it possible to produce and issue to the public a coinage that will be acceptable, provide the maximum convenience, and serve all the purposes—financial and technical—of modern commerce. In considering this problem the needs of the economy and the convenience of the public have been placed ahead of all other considerations. They are the factors that have resulted in my recommendations to the Congress. I urge their approval at the earliest possible date.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *June 3, 1965.*

CALL OF THE HOUSE

Mr. HALL. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. ALBERT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 120]

Andrews, George W.	Fraser	Murray
Ayres	Fulton, Tenn.	Passman
Bandstra	Fuqua	Powell
Blatnik	Gilligan	Price
Bonner	Halleck	Purcell
Bow	Halpern	Resnick
Brown, Ohio	Harvey, Ind.	Roberts
Casey	Hébert	St Germain
Chamberlain	Holland	Shriver
Cramer	Karth	Sikes
Cunningham	Keogh	Skubitz
Dent	Laird	Teague, Tex.
Diggs	Lindsay	Toll
Duncan, Oreg.	Mathias	Willis
Evans, Colo.	Michel	Wright
Fisher	Miller	Young
Fogarty	Minshall	
	Morris	

The SPEAKER. On this rollcall, 382 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

COMMITTEE ON RULES

Mr. BOLLING. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tomorrow night to file certain reports.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

FURTHER AMENDING THE REORGANIZATION ACT OF 1949

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 326, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4623) further amending the Reorganization Act of 1949. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Missouri [Mr. BOLLING] is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Illinois [Mr. ANDERSON] and pending that such time as I may consume.

Mr. Speaker, while there is considerable controversy, as I understand, over the bill which will be made in order by this resolution, I know of no opposition to the resolution and, therefore, reserve the balance of my time.

Mr. ANDERSON of Illinois. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ANDERSON of Illinois asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Speaker, let me say at the outset that were the ranking member of the Committee on Rules, the gentleman from Ohio [Mr. BROWN] here today, and incidentally he also serves as ranking Republican member of the House Committee on Government Operations, I am sure this is one bill on which he would have exercised his prerogative to make his views known particularly when we undertake to consider the rule.

Because of my service with the gentleman from Ohio [Mr. BROWN] on this committee in years past, I know that probably there is no single act of Congress with which he has been associated of which he is more proud than this, considering the fact that he is thought of by many—and I believe rightfully so—as the legislative godfather of the Reorganization Act of 1949.

The older Members of this body will recall that the gentleman from Ohio served with distinction on the Hoover Commission on the reorganization of the executive branch.

I take this time to call to the attention of Members of the House that it is much to our regret, because of illness, that the gentleman from Ohio [Mr. BROWN] is not in our midst today. I further take this opportunity to assure the Members of the House that those of us who have undertaken to check with his office from day to day understand he is recovering, that he is feeling much better, and that he expects to be back with us sometime next week.

I also express what I am sure is the unanimous sentiment on both sides of the aisle—we join in wishing him a complete and speedy recovery. We sorely miss his wise counsel and legislative leadership. On occasions beyond number, he has exhibited his great capacity to winnow the kernel of legislative truth from the chaff of irrelevant and irresponsible proposals upon which this body is ofttimes called to act. His service in the Congress down through the years has been in the highest traditions of this body, and we hope and trust that his services to our beloved country will continue to be available for many years to come.

Mr. BOLLING. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Missouri.

Mr. BOLLING. The gentleman is entirely correct in expressing the sentiments of all Members of the House in wishing our friend from Ohio [Mr. BROWN] a quick recovery and a quick return. I am certain that everybody on this side, as well as on the other side, joins in that sentiment.

Mr. ANDERSON of Illinois. Mr. Speaker, I shall not take much additional time under the rule. I believe the gentleman from Missouri has correctly stated the situation.

Let me say only that the point at issue today will not be whether the Reorganization Act of 1949 should be extended. There are very few acts of Congress which have met with more general approbation than this particular act.

The point at issue will be found in the views of the minority, as very well set forth in those views which are a part of Report No. 184. The minority views suggest that an amendment to this act ought to be adopted, to provide for a 2-year extension rather than a permanent extension of the act. That is the only real point at issue today, as I understand it.

Perhaps because I have had the opportunity of serving under the chairman of this committee, the gentleman from Illinois [Mr. DAWSON], and the ranking Republican member, the gentleman from Ohio [Mr. BROWN], in years past, I do feel obliged to say that I agree with the Members of the minority who have said it would be wise for us to preserve the right we have as a Congress to periodically, every 2 years, consider the question of the extension of the act.

Members will recall that in 1949 President Truman asked for permanent reorganization authority. The Congress at that time did not see fit to give him permanent authority, but passed the act for 4 years. Since that time the act has been renewed, on the average about every 2 years.

I believe that during the times when the extension of the act has come up, the House has undertaken to review the act. On two occasions I can recall we made important amendments to the Reorganization Act.

I believe it would be poor policy indeed at this time for the Congress to give up the right which it now has under the Reorganization Act of 1949 to periodically consider the question of its extension.

I hope that during the general debate, when this issue will be presented, and, as I understand it, when the amendment is offered under the 5-minute rule, to provide for a 2-year extension rather than a permanent extension of the act, Members of this body on both sides of the aisle will consider the importance of adopting that amendment and then going on to approve the extension of the Reorganization Act.

Mr. Speaker, in concluding my remarks, let me merely reiterate this point: I do not think on the grounds of this consuming and inordinate amount of time on the part of Congress that we ought to give up the right we have heretofore had in considering the extension of this act on a periodic basis. I have studied the hearings reported this year and find they took a portion of 1 day, March 3, 1965. Under the rule we will spend about an hour of time in considering this matter today. It all seems to me a relatively small expenditure of time on our part, and it will be well worth the effort we ought to make today to retain our prerogative in considering the further extension of this act.

Mr. Speaker, at this time I yield 5 minutes to the gentleman from Minnesota [Mr. NELSEN].

(Mr. NELSEN asked and was given permission to proceed out of order, to revise and extend his remarks and include extraneous matter.)

POLITICAL SHAKEDOWNS IN THE REA

Mr. NELSEN. Mr. Speaker, the May 28 issue of the Washington Star contained a front page story by Walter Pincus indicating that the political arm twisters are at work again trying to pressure Federal employees into buying $100 tickets to the 1965 Democratic congressional dinner on June 24 at the National Armory. I include this article at this point in my remarks, along with a Washington Star editorial of June 1 commenting on these disclosures:

U.S. WORKERS TARGETS AGAIN

(By Walter Pincus)

Machinery to solicit political contributions from Federal employees again has been set in motion by Democratic Party officials given the job of selling $100 tickets to the 1965 Democratic congressional dinner on June 24 at the National Armory.

The aim this year, through mailings and personal contact, apparently is to get those employees who contributed last year during the presidential campaign to contribute again.

As part of their program, the Democrats again appear to be planning to push ticket sales within Federal departments and agencies—a practice that previously has stirred up criticism from within the Civil Service.

This year, however, it's the "salesmen" selected to do the pushing who appear disturbed.

"You have a choice—break the Justice Department's law or Maguire's law," one political appointee said Wednesday. He had just been made part of his agency's team to push sales of $100 tickets to the dinner to a list of his colleagues.

The "Justice Department's law" is a section of the Federal code which makes it illegal for one Federal employee to "directly or directly" solicit, receive "or * * * in any manner (be) concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever * * *" from another Federal employee. The penalties: a fine of not more than $5,000 or a sentence of not more than 3 years in jail or both.

"Maguire's law" refers to Democratic Party treasurer Richard Maguire, the man credited with setting up the machinery for systematic solicitation within Federal agencies.

The "in-house" salesmen, for the most part, are the agency's political appointees whose futures depend in large part on the good will of party officials.

In the past, the Federal law has pretty much been winked at. This year, however, the Justice Department is weighing a Federal Bureau of Investigation report to determine whether several officials of the Rural Electrification Administration violated Federal law in their promotion last year, of $100 tickets to the Democratic fund-raising gala.

The Civil Service Commission, after a preliminary inquiry into the matter last fall, determined the facts were such to warrant study for prosecution.

Despite the Justice Department inquiry, Democratic Party aids have begun to distribute lists of last year's contributors to Federal agencies to aid in selling this year's dinner tickets.

Officials at both the State and Commerce Departments reportedly not only have received such lists, but have discussed promotion of ticket sales with selected top staff members.

At the State Department, a meeting reportedly took place within the past week and the list of last year's contributors was broken down among a group of eight political appointee "salesmen." Their job was to keep to the "strictly political" jobholders, but to encourage them to again contribute to the party.

Reports that a similar meeting took place at Commerce could not be confirmed.

At one point in the State meeting, a suggestion that solicitation letters be sent to ambassadors overseas was vetoed.

Complementing the direct solicitation effort is a mailing to lists of contributors over the signature of Party Chairman John M. Bailey inviting the recipient to the dinner and enclosing a pledge card.

The card contains a code number that permits the dinner committee to identify a Government employee's agency and so seat him with his coworkers.

MILDER THAN 1964 EFFORT

This year's in-house solicitation appears to be much milder in its approach than was the effort made last year to sell gala tickets.

At that time, top agency officials scheduled cocktail parties to precede the event and agency "salesmen" went down their assigned lists asking fellow workers if they were coming to the party.

From the party, buses took those present to the gala where they all sat together—usually with the front row of their section filled with the highest ranking agency officials from the Secretary down.

How much actual "pressure" is involved in ticket sales? Some civil servants considered the very fact they received an invitation at home implied "pressure."

One agency salesman said the belief that President Johnson was the kind of politician who watched officeholder contributor lists was a form of "pressure."

NEW ELEMENT NOW

Adds a Democratic National Committee spokesman: "The biggest pressure came from repeated news stories that employees were being threatened as to what would happen if they didn't come through."

This year there appears to be a new element of resentment among the "salesmen." They have a fear that should someone report them—as happened in the REA case—no one, particularly party officials, could come to their defense.

Party officials who hand out contributor lists in no way violate the law. Only the Federal employee who approaches a colleague faces trouble.

MAGUIRE'S LAW

Well, the time for another of the Democrats' $100-a-plate fundraising dinners is once more drawing near. And once more the party hierarchy in Government offices all over town is revving up the machinery to put the arm on Federal employees for contributions—in clear violation of Federal law.

Thus far, as the Star's Walter Pincus noted the other day, the main complaints are coming from employees recruited to push the congressional dinner ticket sales. Their concern is understandable. For the Federal code is quite specific in making it a crime for any Federal employee "directly or indirectly" to solicit funds from another Federal employee "for any political purpose whatever." And while this is not a new provision, most of the ticket pushers are fully aware that the Justice Department is examining an FBI report on complaints which arose in connection with a similar party gala last year.

The trouble is, as one anonymous political appointee put it, that he and many of his colleagues are placed in a position of breaking either "the Justice Department's law or Maguire's law"—the latter referring to the solicitation plans reportedly set up by Richard Maguire, the Democratic treasurer.

There is no question, of course, about what action is called for here. "Maguire's law" ought to be repealed, fast, and no congressional action is required to do it. Legislation may well be desirable to encourage wider financial support of political candidates and their parties, possibly through tax credits or tax deductions. But in the meantime Federal employees should be protected against the pressures to give which are inevitably present under the sort of solicitation program which is now getting underway.

Mr. Speaker, I wish to publicly commend Mr. Pincus and his newspaper for bringing these shocking political shakedowns into the open, and exposing them to public view. I believe it is a great public service.

As Members of this body know, similar complaints of illegal political fundraising solicitations by Federal officials were brought to me many months ago by Federal workers in the Rural Electrification Administration of the Department of Agriculture because I once served as REA Administrator.

After much badgering, the Civil Service Commission agreed to look into the charges and documentation which had been provided to me, and the very first Civil Service Commission investigation of its kind was begun. Finally, on October 8, 1964, I was advised that the Commission had found four REA officials to be "involved." Three of the officials are in excepted positions and one is in the classified service.

In the October 8 letter, the Commission's General Counsel also advised me that the results of the investigation were being turned over to the Justice Department for determination of possible criminal violations. I include the text of this October 8 letter at this point in my remarks:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., October 8, 1964.

Hon. ANCHER NELSEN,
House of Representatives.

DEAR MR. NELSEN: This is in response to your letter of September 22, 1964, concerning the investigation of alleged Hatch Act violations in the Rural Electrification Administration and your telephone calls of September 28 and October 1. As I told you on the phone, I was somewhat handicapped in my endeavor to obtain the information you wanted because of the hospitalization of Mr. Meloy, who was personally supervising the conduct of the investigation.

As you know, we conducted an investigation of the alleged Hatch Act violations in the Rural Electrification Administration. There are four individuals involved. One is in the competitive service and subject to our jurisdiction; the other three are in excepted positions and subject to the jurisdiction of the Department of Agriculture. In an effort to coordinate action we have notified the Secretary of Agriculture of our investigation. We have not been advised as to what they plan to do.

In addition, we have furnished the Department of Justice with a copy of our investigation. That Department has jurisdiction to determine whether to prosecute for violation of the criminal laws. It has been our practice in this kind of a situation to defer administrative action until the criminal aspects of the case have been fully explored.

I am not in a position at this time to express an opinion as to a violation of the Hatch Act by the employee who is subject to our jurisdiction. Under the procedure we follow such a decision is made initially only after a letter of charges has been served and the employee's answer has been considered.

Sincerely yours,
JOHN J. MCCARTHY,
Assistant General Counsel.

Mr. Speaker, in January of this year I inquired of the then Acting Attorney General as to the progress of the Justice Department consideration of the civil service findings. Mr. Katzenbach replied to my letter of January 12 on February 4 stating that the Federal Bureau of Investigation had been requested to investigate the facts in the case. This exchange of correspondence is included at this point in my remarks as a further documentation of the chronological development of this investigation:

JANUARY 12, 1965.

Hon. NICHOLAS DEB. KATZENBACH,
Acting Attorney General,
Department of Justice,
Washington, D.C.

DEAR MR. KATZENBACH: Enclosed you will find a copy of a letter which I received from the Assistant General Counsel of the U.S. Civil Service Commission under date of October 8, 1964, reporting on their investigation of alleged Hatch Act violations in the Rural Electrification Administration.

You will note that three individuals involved in this investigation are in excepted positions and subject to possible prosecution for violation of the Corrupt Practices Act.

You will note further that a copy of the Civil Service Commission investigation was furnished the Department of Justice.

As this point, I would be interested in knowing if your Department has determined whether to prosecute for violation of criminal laws and whether any report has been made to the Civil Service Commission of your consideration.

I am fully cognizant of the necessity for protection of the rights of individuals involved in such procedures, and at this point I am not asking that I be provided with a detailed report which would divulge the identity of the Federal employees involved. In the interest of protecting and fostering the merit system in Federal employment, however, I do feel that cases such as these should have prompt and expeditious consideration.

Thank you for your kind cooperation.

Sincerely yours,
ANCHER NELSEN,
Member of Congress.

FEBRUARY 4, 1965.

Hon. ANCHER NELSEN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN NELSEN: This will reply to your letter of January 12, 1965, with which you enclosed a copy of a letter to you from the Assistant General Counsel of the U.S. Civil Service Commission, referring to an investigation of alleged violations of the Hatch Act in the Rural Electrification Administration of the Department of Agriculture.

We have requested the Federal Bureau of Investigation to investigate the facts in this matter following which a determination will be made whether any violations of Federal criminal statutes relating to the solicitation of political contributions by Federal employees have occurred which would warrant prosecution. You are undoubtedly aware that in addition to possible criminal violations there are also involved possible administrative penalties, the imposition of which is within the responsibility of the Civil Service Commission and the employing agency.

Sincerely,
NICHOLAS DEB. KATZENBACH,
Acting Attorney General.

After a time lapse of almost 2 more months, I again contacted the Justice Department for a report. At the same time I addressed a letter to Chairman Macy, of the Civil Service Commission. My deep concern over the apparent lack of expeditious resolution of this case was expressed to both Attorney General Katzenbach and Chairman Macy. Acting Assistant Attorney General John Doar responded to my letter of March 26 on April 5, stating in part:

I have received the results of the FBI investigation into this matter. This report is being carefully reviewed by this Division and it is expected that this review will be completed in the near future.

I include my letters of March 26 and the Justice Department reply of April 5 at this point in my remarks:

MARCH 26, 1965.

Hon. NICHOLAS DEB. KATZENBACH,
Attorney General of the United States,
Department of Justice,
Washington, D.C.

MY DEAR MR. ATTORNEY GENERAL: This is with further reference to my letter of January 12 and your reply dated February 4, 1965, concerning the investigation of alleged violations of the Hatch Act and Corrupt Practices Act in the Rural Electrification Administration of the Department of Agriculture.

In your letter of February 4, you informed me that the Federal Bureau of Investigation had been requested to investigate facts in this case preliminary to a determination as to whether criminal violations had occurred which would warrant prosecution. It is evident that no such determination has yet been made, since no action has been taken by the Civil Service Commission within its responsibility of an administrative nature concerning violations of the Hatch Act in the classified service. It has been my understanding, and I am so informed, that it is Commission policy to defer its action in a case pending resolution of criminal aspects by the Department of Justice.

I am concerned that any possible delay in the handling of this case by the Department of Justice would be the cause of any default in the expeditious consideration of a matter so important to the preservation of the integrity of our Federal Civil Service.

I would hope that I would have your report on this matter in the very near future.

Sincerely yours,

ANCHER NELSEN.

APRIL 5, 1965.

Hon. ANCHER NELSEN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN NELSEN: In your letter of March 26, 1965, to the Attorney General you expressed concern over possible delay by the Department of Justice in handling the investigation of alleged violations of the Hatch Act and Corrupt Practices Act in the Rural Electrification Administration of the Department of Agriculture.

I have received the results of the FBI investigation into this matter. This report is being carefully reviewed by this Division and it is expected that this review will be completed in the near future.

I will keep you advised of any developments in this matter.

Sincerely,

JOHN DOAR,
Acting Assistant Attorney General,
Civil Rights Division.

MARCH 26, 1965.

Hon. JOHN W. MACY,
Chairman, Civil Service Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is a copy of my letter to Attorney General Nicholas deB. Katzenbach concerning the current Justice Department consideration of alleged violations of the Hatch Act and Corrupt Practices Act in the Rural Electrification Administration of the Department of Agriculture.

I first made public reference to this situation back in 1961, and finally in 1964 was challenged by your Commission to provide documented evidence of my charges. This I did, and a Commission investigation was instituted in June of last year. The results of this investigation were reported to me by the Commission's General Counsel by letter dated October 8, 1964.

Mr. Meloy reported that four individuals were found to be involved, one of whom was in the classified service and three of whom were in the excepted service. His letter goes on to state that final action by the Commission under its jurisdiction in the case would not be taken until all criminal aspects of the case had been determined by the Department of Justice.

More than 2 months have now elapsed since the Attorney General's advising me that the Federal Bureau of Investigation had been requested to look into the case. It is now going on 6 months since your General Counsel's advising me that the results of the Commission investigation had been referred to the Justice Department. It is now over 4 years since my having revealed this situation in a public statement.

The primary duty and responsibility of the Civil Service Commission being to maintain and protect the independence of our Federal merit system, I feel it incumbent upon me to impress you and your Commission of my concern over the lack of dispatch in the handling of this case. It would be my understanding that you would be in constant contact with the Justice Department in the interest of expediting the fair and just determination of this entire matter and that you are keenly aware of the significance of this case to the merit system employees throughout the Federal Government.

Sincerely yours,

ANCHER NELSON,
Member of Congress.

We are now in the first of June, and this is where the matter continues to lie 9 long months after the Civil Service Commission report showing involvement in possible violations of the Hatch Act and the Corrupt Practices Act. These investigations by the Justice Department and Civil Service Commission have turned into a long stall.

The Washington Star article shows clearly that failure to take corrective action has served as an open invitation to the money-hungry politicians in Federal jobs to go right ahead with their harassment and pressures on employees in the service of their Government.

Obviously, the best way to deter such activities is to take proper action against those who have already been found to have been engaging in political fundraising among civil service employees. I would hope the effect of these latest disclosures will be to awaken officials in the Civil Service Commission and the Justice Department to their responsibilities to protect our Federal workers from further shakedowns and arm twisting.

FURTHER AMENDING THE REORGANIZATION ACT OF 1949

Mr. BOLLING. Mr. Speaker, I move the previous question.

The previous question was ordered.

The resolution was agreed to.

Mr. HOLIFIELD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4623) further amending the Reorganization Act of 1949.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 4623, with Mr. SISK in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from California [Mr. HOLIFIELD] will be recognized for 30 minutes, and the gentleman from Illinois [Mr. ERLENBORN] will be recognized for 30 minutes.

Mr. HOLIFIELD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 4623 was introduced at the request of President Johnson and, as reported by the Committee on Government Operations, would give permanent authority to the President to submit reorganization plans to the Congress.

Let me underscore that heretofore, except when the authority was granted for a 4-year period, we have granted this authority every 2 years for the past 32 years.

President Johnson considers this an essential tool for the reorganization of Government departments and agencies. Under the power which expired on June 1, President Johnson has submitted five reorganization plans in this current year, indicating that he intends to use this legislation to achieve efficiency and economy in the vast Federal establishment of Government.

Reorganization authority has been given to every President from Herbert Hoover to Lyndon B. Johnson. The present Reorganization Act was enacted in 1949. Under its terms the President may submit reorganization plans to Congress which will go into effect after 60 days unless either the House or the Senate vetoes the plan by simple majority vote.

Since 1949, this authority has been extended for intervals of 2 years with the exception that I mentioned of 4 years which was in the period of 1949 to 1953. In his message of February 3, 1965, to the Congress submitting the draft bill, President Johnson said:

> With only a few lapses since 1932, the authority generally similar to that conferred by the present Reorganization Act has been available to the Presidents then in office. The usefulness of the authority to transmit reorganization plans to the Congress and the continuing need for such authority to carry out fully the purposes of the Reorganization Act have been clearly demonstrated. The time has now come, therefore, to eliminate any expiration date with respect to that authority; the authority should be made commensurate with the responsibility of the President under the same statute.

There was general agreement in the committee on the extension of the present law. The only difference of opinion was on the length of the extension. In my judgment, the case was well made for permanent extension. Among other things, the Executive has been handicapped in times past in his effort to make reorganizations due to the failure of the Congress to promptly enact the necessary extensions, thereby causing periods when the law did lapse and his authority would not be available. We are in one of those periods now. For the last 2 days, since June 1, we have been in that period when there is no authority at this time for the President to send up plans. At other times that lapse occurred for a matter of several months. I might say, however, that this fault did not lie with the House inasmuch as we have always been diligent about the timely extension of the Reorganization Act and if there be any blame on the House it can only extend to the 2 days just past, because this is the only time the House has not acted before the expiration date.

It should be noted that in 1957 the Act lapsed from June 1 to September 4. In 1959 the act lapsed on June 1 and Congress did not reinstate the authority

until April 7 of 1961, nearly 2 years later. In 1963, the act lapsed on June 1 and was not reinstated until July 2, 1964, more than a year later.

We have been informed by officials of the Bureau of the Budget that this continual uncertainty has had a severe effect on reorganization planning and has limited the advantages provided by the legislation.

I might say—and I hope my Republican friends are listening—that President Hoover endorsed permanent reorganization authority for the President, when he served as Chairman of the Commission that bears his name. Both the gentleman from Ohio [Mr. BROWN] and I were privileged to serve on that Commission under President Hoover and I can attest to the great ability of this past President of the United States; how earnestly he worked; he put in more hours on that Commission, I think, than any of the members including your present speaker. He recommended permanent reorganization power for the President because he realized that there would always be housekeeping improvements to be made in our very sprawling agencies of the Federal Government.

This is an authority that has been used for many years. It has proven its merits. Why the Congress should have to come in every 2 years and go through this ritual seems somewhat fruitless in my mind. If it were an untried piece of legislation, it would be different. However, we are talking about something that has proven its worth over the span of 3 decades.

So, Mr. Chairman, our committee reported out the bill giving permanent authority to the President. However, since our committee reported the bill, the other body has acted to extend the law for a period of 3½ years, until December 31, 1968, which coincides with the present President's term of office.

Now, Mr. Chairman, this is different from the permanent extension requested by the President and passed by the House Committee on Government Operations. Furthermore, as I have already stated, the present authority expired on June 1, just 2 days ago. In order, then, to prevent a further postponement of final action and in order to get the authority back on the books as quickly as possible, it seems reasonable to agree to the 3½-year extension approved by the other body.

Therefore, Mr. Chairman, the majority members of the committee recedes at this time from its position of giving permanent authority and accepts the action of the other body which will, in effect, extend the period from 2 years to 3½ years, making it conterminous with the present President's term.

Mr. Chairman, an amendment to that effect will be offered at the proper time by the gentleman from Wisconsin [Mr. REUSS]. As has been said by my colleague, the gentleman from Illinois [Mr. ANDERSON], there is no argument about the extension of this act. All of us know that it is worthwhile. The argument, if there was an argument which existed at all, would be as to whether it should be extended for 2 years or made permanent.

Mr. Chairman, the majority of the Committee on Government Operations has accepted the 3-year 7-month extension of the other body, believing that this represents a reasonable compromise.

Mr. Chairman, I hope my friends on the Republican side of the aisle will recognize this.

There was a time, in 1949 to 1953, when we had a 4-year term and we had no trouble during that time. Therefore, I would anticipate no trouble during the 3½-year period of time.

Mr. Chairman, may I remind my colleagues that there are ample safeguards contained in the 1949 act and the prerogatives of the Congress are fully protected.

When a President submits a reorganization plan to the Congress, it is immediately referred to the Committee on Government Operations of both the House and the Senate for their study and consideration. Any Member of the House or Senate may file a disapproval resolution which is likewise referred to the Committee on Government Operations of either body. The committee will then hold hearings on the resolution, and it must do that within the span of 10 days. Thereafter, the plan is usually reported by resolution to the floor with a recommendation one way or the other.

If the committee does not report the resolution back within 10 days, the Member who filed the resolution of disapproval or any Member of the House who is opposed to the reorganization plan may move to discharge the committee from its consideration of the legislation. This motion only has to carry by a majority vote of those present and voting.

A motion reported by a committee or discharged by a committee may be called up by a Member at any time thereafter within the 60-day period.

Mr. Chairman, a reorganization plan is a privileged resolution I will call to the attention of the Members of the House. If the disapproval resolution is passed by a simple majority of either House, the reorganization plan cannot go into effect.

So I say that there are ample safeguards, that there is no delegation of authority to the President to legislate. There is authority delegated to him to send up a draft of legislation in the form of a reorganization plan.

But the legislative bodies control what they are doing with that plan. They can reject it or they can accept it by a simple majority vote of either House.

It is true that reorganization plans reverse the usual legislative procedure. But the Congress is well protected under the law and neither dilatory action by committees nor requirements for a constitutional majority can now prevent adverse congressional action on a plan.

The Committee on Government Operations has always carefully scrutinized the details and effect of all plans submitted by the President. The committee has, in the past, recommended to the House that plans be rejected because they were defective in the terms in which they were drawn or would not achieve the objectives of the Reorganization Act. As noted in our report on this bill, the committee has, in many instances, requested the opinions of the committees of the House where the departments or agencies concerned fell within their legislative jurisdiction but, of course, always reserving the right to make our own final judgment on a plan. On at least one occasion we rejected a plan, rewrote it as legislation, and recommended its passage by the Congress.

The Reorganization Act has worked well. It has proved its value in the results of eliminating duplication and improving methods of Government operation that have been established under reorganization plans. I urge that the basic Reorganization Act be extended.

Mr. ERLENBORN. Mr. Chairman, I yield myself 15 minutes.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

[Mr. ERLENBORN addressed the Committee. His remarks will appear hereafter in the Appendix.]

Mr. HOLIFIELD. Mr. Chairman, I have no further requests for time.

Mr. ERLENBORN. Mr. Chairman, I yield 10 minutes to the gentleman from Florida [Mr. GURNEY].

(Mr. GURNEY asked and was given permission to revise and extend his remarks.)

Mr. GURNEY. Mr. Chairman, I would like to amplify on what the one gentleman from Illinois said about the other gentleman from Illinois. The previous speaker in the well [Mr. ERLENBORN] just made his first presentation in the House of Representatives as a new Member handling a rather technical question and problem, and in the almost unique situation for a freshman House Member, directing the debate on the Republican side as ranking committee Member I think he did a splendid job, and all of us should be proud of his performance as a new Member of the House.

Mr. Chairman, the issue here really is very simple and clear cut. It is, should the Congress make permanent the Presidential power under the Reorganization Act. I might add that at least that is the position at the moment, although, of course, it will be amended shortly, as the gentleman from California [Mr. HOLIFIELD] has pointed out.

Now, then, what is this power we are talking about, anyway? Well, of course, it is that the President may formulate and transmit plans for the reorganization of the executive branch of the Government which will go into effect unless the Congress vetoes the plan within 60 days. However, of course, the issue we are talking about here is not that at all, because we are all agreed that this is a good idea. What we are talking about is the power here of the President to legislate, because here in this Reorganization Act the President has a very unique power, that is, to legislate, which we, the Congress, have transferred to him and surrendered to him, if you will. The President has had this power under one form of legislation or another since 1932. Many plans have come down to the House and many have been approved. Some

have been rejected. But now we ought to ask ourselves for a moment, is there any reason to make the power permanent or, for that matter, to extend it beyond the usual time of the 2-year period we have been operating under for most of the period of the power since 1932.

I would like to point out to the House that there were only factors in the administration's presentation. First of all, there was a letter which the President sent to the Speaker of the House. Next there was one short hearing conducted before the committee. Actually, there was only one witness. I find nothing in the letter and nothing in the hearing that presents any valid reason whatsoever or, for that matter, any argument at all to show that it is necessary to make the power permanent or, for that matter, now to extend it beyond the custom we have been following of 2 years. As a matter of fact, in the hearings the witness was asked by one of the members:

In your opinion, Mr. Seidman, have these gaps inhibited your ability to function in this area?

He replied:

I think not my ability, but I think it has inhibited the President.

And then Mr. BROWN said: "Where did a President fail to function at that time?"

There was a short answer to that; and then:

What did a President want to do that he could not do, or didn't do?

And then the expert Government witness said this:

It is difficult for me to cite the specific examples, but I know there were ones.

Obviously, he did not know, and I would say and submit that since he was a Government expert witness and could find no examples that there really were no valid reasons. I would like to make the point that both the ranking minority Member here has made, as well as the chairman on the Democratic side handling the bill, that this is not a partisan issue. There is no administration issue or program at stake. It is not a Republican or a Democratic position.

It really is not an issue of States' rights as opposed to big Government. The real issue is that of the Congress of the United States, the House and the Senate, the real function and integrity of the Congress. We of the minority say that we should delegate our legislative function only temporarily. Our position is, of course, only for 2 years. I would submit that the Democrats and Republicans, liberals and conservatives, could well support this position if they wanted to.

It has been said again and again, and I certainly think it is true, and I think everyone on this floor would admit it, that the Presidency is the most powerful public office in the world today. The President has Executive order powers, and thousands of them have been promulgated since the beginning of the Republic. I think a good case could be made that there has been a lot of legislation here. Over in Vietnam and the Dominican Republic, we are engaged in the one place in a very heavy war and in the other place in a skirmish. The President of the United States actually has handled this almost entirely on his own. The Congress has not declared the war. And I do not quarrel with this, I do not quarrel with the President here. I think the President and the administration are doing an excellent job in these situations. I simply cite this as an example of the powers which the President has in this country. I would say that he really does not need any more power.

You know, when we were children we had a little poem that I sometimes use:

Little drops of water,
And little grains of sand,
Make the mighty ocean,
And build a mighty land.

I think it epitomizes very well our issue here. Since the founding of the Republic, certainly there has been a good deal of power transferred from the Congress to the President. More and more has the office become more powerful. That is the issue here today. I do not think we should transmit any more power at our expense.

The Republican, or minority, position is simply this. We say that the President ought to come back to the Congress every 2 years and remove this unique legislative power that we have delegated under this act. This will not in any way impede the President's mission. As a matter of fact, it will not impede the carrying out of his mission, whatever program he wants. It will not tie his hands. But I think it will serve to remind the President that the power that he has under this Reorganization Act is our power, that of the Congress of the United States, that we have transferred to him temporarily.

I would like to close these brief remarks by reading from the President's letter. If you will bear with me, I think this is fairly important. When the President sent up this bill to Congress, he had this to say in his letter. Speaking of his authority, he said:

From this authority will come benefits for the people whose Government this is.

The people expect and deserve a Government that is lean and fit, and—

And he goes on to explain it otherwise. Also he said:

Reorganization can mean a streamlined leadership, ready to do more in less time for the best interests of all the people.

I think the President had a good point to make when he talked about the people.

And, as a matter of fact, when we vote on this issue and when we vote for the Republican amendment or support the amendment that has been outlined on the other side of the aisle, I believe that what we should be concerned with, Mr. Chairman, are the people of the United States—because it is the people under the Constitution of this Government that delegated the lawmaking power, the legislative power, to this House of Representatives, to the other body and to the Congress of the United States and now in the Reorganization Act we have transferred and delegated and surrendered a part of this precious power to the President. I would say the least we could do here is to surrender this power for a limited period of time. Further, Mr. Chairman, I would say that the least we can do is have the President come back to the people through us, the Congress, and ask that the power be renewed from time to time.

Mr. Chairman, in closing I say that the people have a right to expect that this be done and certainly following the custom which we have followed for years and years of an extension of 2 years, makes all kinds of sense, and I would hope that enough Members on the Democratic side would support our Republican amendment to pass it.

Mr. RHODES of Arizona. Mr. Chairman, I rise as chairman of the Republican policy committee to report to this body the position of the policy committee on H.R. 4623.

The Reorganization Act of 1949 has demonstrated its effectiveness in promoting economy and efficiency in the executive branch of the Government. The act, therefore, should be extended.

H.R. 4623, the further amending of the Reorganization Act of 1949, however, is presently written in such a way as to threaten the prerogative of the Congress to review this legislation on a regular basis by making the extension of the act permanent.

The act itself constitutes a reversal of the constitutional procedure whereby the Congress enacts legislation which becomes law upon approval of the Executive. Under the Reorganization Act of 1949 the Executive is authorized to propose reorganization legislation subject only to a limited right of veto by the Congress.

The fact that this reversal of constitutional procedures provides for a more effective means of executive branch reorganization justifies the departure from normal procedure. To strip future Congresses of the right of legislative review of reorganization matters is, however, both unnecessary to the purposes of the act and unwise.

The entire legislative history of the act proves the wisdom of regular congressional review. The act has been amended a number of times since its original enactment. Future Congresses should continue to have the right to make such amendments when, in their view, they are needed.

We support the minority members of the Committee on Government Operations in their effort to amend the present legislation to provide for biennial review.

Mr. HOLIFIELD. Mr. Chairman, I have no further requests for time.

Mr. ERLENBORN. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. There being no further requests for time, the Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sec-

tion 5 of the Reorganization Act of 1949 (63 Stat. 205), as amended, is hereby further amended by repealing subsection (b) thereof and by deleting the subsection designation "(a)".

AMENDMENT OFFERED BY MR. REUSS

Mr. REUSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REUSS: Strike all after the enacting clause and insert the following: "That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act' of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out 'June 1, 1965' and inserting in lieu thereof 'December 31, 1968'."

Mr. REUSS. Mr. Chairman, the authority granted by the 1949 Reorganization Act ought to be made permanent. This is the judgment of President Johnson. The permanency feature was also the judgment of the late President Herbert Hoover and the Hoover Commission. It was the judgment of President Truman and the judgment of President Eisenhower.

However, Mr. Chairman, we are confronted with this situation today. By a unanimous vote of the majority members of the Committee on Government Operations, this bill has been brought to the floor with the permanent reorganization power given to the President. By what I believe is a unanimous position of the minority members, the proposal was made that while the extension of the reorganization power is in the public interest, it ought to be extended for only 2 years. We are now faced with the following reality:

Unhappily, the existing reorganization power of the President expired on June 1, just 2 days ago. Since the Committee on Government Operations of the House reported out H.R. 4623 back in March of this year, the Senate has passed the bill, S. 1135, now on the Speaker's desk to extend the authority for 3½ years, until the end of December 1968. This will be the end of the first term of office of President Johnson.

Mr. Chairman, in order to avoid prolonging the period under which we are now suffering, where no authoirty to submit plans will be available to the President, and hence his ability to reorganize for purposes of economy and efficiency is seriously handicapped, I hope that this amendment will be adopted, and that we may then take from the Speaker's desk the identical Senate-passed bill and thus be in a position to send the combined Senate-House bill to the White House for signature.

I am well aware of the fact that a 3½-year extension does not cure all of the problems caused by the 2-year extension, but it is vastly preferable to the 2-year extension.

Mr. Chairman, I hope that this amendment will be adopted.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. REUSS. I yield to the gentleman from California.

Mr. HOLIFIELD. As manager of this bill, may I say that I have consulted with the other members of the committee, the majority members of the committee, and they are in favor of the amendment offered by the gentleman. I see my worthy friend on his feet seeking recognition, so all I will say is that the majority side is in favor of the amendment as a reasonable compromise.

Mr. REUSS. I thank the gentleman, and hope that the amendment will be adopted.

Mr. ERLENBORN. Mr. Chairman, I offer an amendment which I offer as a substitute amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN as a substitute for the amendment offered by Mr. REUSS: Strike out all after the enacting clause and insert in lieu thereof the following: "That subsection (b) of section 5 of the Reorganization Act of 1949 (5 U.S.C. 133z–3) is amended by striking out 'June 1, 1965' and inserting in lieu thereof 'June 1, 1967'."

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, the question now is going to be squarely presented to the Committee as to whether we want to extend this power for a 2-year period or for a 3½-year period. It was mentioned that the other body has chosen the 3½ years, and somewhat reluctantly the majority in the House is willing to go along.

I think there are some obvious defects in going along with the 3½-year period. First of all, I pointed out in my presentation before this means we are going to extend the rules of the House beyond the current Congress, that these rules will be applicable to the next Congress, somewhat contrary to our usual procedure.

Secondly, and I think more important, to understand why the 3½ years was adopted by the other body, you will have to read the text of the hearings that were conducted by the Government Operations Committee of the other body. It is also interesting to note that one of the most vocal opponents to the permanent extension in the Committee on Government Operations of the other body was the chairman of that committee, who was the sponsor of the bill at the request of the President. After these hearings were conducted the sponsor of the bill, chairman of the committee, found he could not go along with the President's request as he originally had done by introducing the bill, but he, together with others, devised a plan of etxending this for 3 years and 7 months.

The purpose, as I explained it, is that it does coincide with the term of our present President. He could have requested this for another 4 years, but this coincides with the term of the next President so that we could consider this power in the light of the knowledge who our next President would be in each 4-year period.

I think they made some miscalculations. Since the Congress in 1968 no doubt will adjourn prior to the November elections and will not be again in session until January 3 of 1969, the extension of this power cannot be accomplished in 1968 prior to adjournment with the knowledge of the fact who the next President is going to be. And the same thing will be true for an extension of 4 years. So that the purpose of the gentleman in the other body of choosing this period of time, I think has been thwarted by their choosing of this period of time of 3 years and 7 months.

I think it makes much more sense for us to extend this for 2 years as my substitute amendment would do and then we could extend it for another 2 years, and that would bring us to June 1 of 1969 and at that time the new President would have been chosen and he would have been in office a few months, and this Congress would be in a better position to assess the necessity or the worthwhileness of extending the reorganization power to the new President.

So I think this expiration date of June 1 that we have, and extending in 2-year periods, would better accomplish the purpose of the gentleman of the other body who chose this awkward period of 3 years and 7 months. Therefore, I urge the adoption of my substitute amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. REUSS. Mr. Chairman, I rise in opposition to the substituted amendment.

I oppose the substitute amendment offered by the distinguished minority member [Mr. ERLENBORN], for one important reason.

The reorganization plan procedure, even if made permanent, is a very shy bird and a very frail reed. That is so because reorganizations can only be attempted under it in about 4 or 5 months of the average year. It will not work in the first month or two of congressional organization. It takes a 60-day waiting period, and no administration is likely to want to send up a reorganization plan toward the end of the session for the simple reason that 60 days is not likely to elapse before adjournment.

For this reason there have been serious gaps in our reorganization procedure. In recent years, in 1959 and 1960 and again in 1963, reorganization was impossible because Congress had neglected to renew the authority. Indeed, it is true today and for the first 2 days in June that there is on the books no reorganization authority. So President Johnson, President Eisenhower, President Truman, and President Hoover knew what they were talking about when they asked that this authority be made permanent. The 3½-year, end-of-the-presidential-term proposal, of the other body is not as good as making it permanent, but it is vastly better than cutting it back to 2 years, as the substitute amendment of the gentleman from Illinois would do.

So in conclusion, let me urge my Republican friends to join us in voting down the 2-year amendment for two good reasons. First, from the standpoint of party solidarity, I would hope that you would give the late President Hoover unstinted backing in his feeling that a 2-year limitation is unwise and unjust.

Secondly, as reasonable men, we Democrats have come here with a bill for permanent power. You Republicans have come here with a 2-year proposal. We now offer 3½ years. We ask you to go up by a year and one-half and we

are willing to come down from infinity—from eternity—to 3½ years. As is said in the Bible, if my adversary will go with me a mile, I will go with him twain. We Democrats have come a long way from infinity. I hope Republicans, as reasonable men, will join us in voting down the 2-year substitute.

Mr. RUMSFELD. Mr. Chairman, I rise in support of the substitute amendment.

Mr. Chairman, as a member of this committee, I have heard the arguments of the gentleman from Wisconsin frequently raised in opposition to the 2-year extension and in favor of a 3-year extension—or a permanent extension—as was proposed by the majority party. I have heard the argument raised that this power has lapsed from time to time. The gentleman from Wisconsin just raised this point and indicated this was unfortunate, and that this unnecessarily restricted the executive's opportunity to put forward reorganization plans. Yet, the years he cited, of course, were years when the Democratic Party was in the majority as they are in the majority now. I think the gentleman from Wisconsin would have to agree there was no reason in the world for this power to have lapsed this year. The Government Operations Committee considered this early in the year and it was considered in sufficient time to come out prior to the lapsing of this power this year.

It seems to me that the problem of lapsing could be easily overcome if the leadership wanted to have it overcome, if they wanted to schedule the extension for floor action, if they were seriously concerned about the disadvantage to the executive branch which the gentleman claims as a result of a lapse in the authority.

I am also aware that this power may have lapsed at times when the Republican Party was in control of the Congress.

To my knowledge, none of the lapses actually restricted the Executive from offering a reorganization plan.

I would add that the arguments the gentleman from Wisconsin has made in opposition to the 2-year extension could be applied with as much effectiveness and eloquence against a 3½-year extension which he now supports.

I certainly urge the Members of the House to support the proposal for a 2-year extension. I believe it would be a reasonable extension. It is similar to what we have done in the past.

Mr. REUSS. Mr. Chairman, will the gentleman yield?

Mr. RUMSFELD. I am happy to yield to the gentleman from Wisconsin.

Mr. REUSS. I thank the gentleman from Illinois.

I want to set the record straight on a couple of matters.

In the first place, there was testimony before the Committee on Government Operations that past lapses had in fact inhibited the reorganization process.

In the second place, it is true that those lapses did occur. It is only the rule of comity between this House and the other body which keeps me from saying now which body was responsible for those regrettable lapses.

Mr. RUMSFELD. I thank the gentleman.

Mr. REINECKE. Mr. Chairman, will the gentleman yield?

Mr. RUMSFELD. I yield to the gentleman from California.

Mr. REINECKE. Is it not also true that if this power lapses as of December 31, 1968, we could not possibly reinstitute the procedure until new committees of Congress had been formed and the committees could go to work, which would almost guarantee 1-month delay.

Mr. RUMSFELD. I thank the gentleman. This, of course, is a possibility. Let me emphasize that I support the extension of this reorganization authority. This procedure has worked well. I favor the 2-year extension. I oppose the permanent extension. If the 2-year extension fails it is my intention to support the 3½-year extension, not as the best solution, but as a considerable improvement over the proposed permanent extension.

Mr. GURNEY. Mr. Chairman, I rise in support of the Erlenborn amendment and move to strike the requisite number of words.

I should like to set the RECORD straight, in terms of the observation made by the gentleman from Wisconsin [Mr. REUSS] that there were reasons given in the testimony that the lapses inhibited the actions of a President. I thought I had made it clear in the well in my previous argument, that there was no such evidence at all.

The only evidence possibly shading on this point occurred when the Assistant Director of the Bureau of the Budget, Mr. Seidman, had completed his testimony. He gave nothing in this testimony to show this. He was asked a question by Mr. BROWN:

> What did a President want to do that he could not do, or didn't do?

That referred to when there had been lapses. Mr. Seidman said:

> It is difficult for me to cite the specific examples.

He did not know any. There was no evidence, actually.

It seems to me the issue is down to the fact that the majority obviously has discarded the argument that the power in the President ought to be made permanent. They recognize and adhere to the minority position that the power should be extended for a temporary time only.

We have operated under this Reorganization Act or one similar to it since 1932, some three decades. All during this time, except for one period of 4 years, as I understand it, we have always done so under 2-year extensions. Since we have operated so well and the thing has worked so well, as everybody has agreed, both Democrats and Republicans, why not continue to operate the program under 2-year extensions which have worked so well.

It seems to me that is the nub of the argument, instead of pulling some 3½-year rabbit out of a hat, which does not tie to anything or make any sense, really, at all.

I hope that the gentleman from Wisconsin might support our reasonable argument for a 2-year extension.

Mr. HALL. Mr. Chairman, I move to strike the necessary number of words.

Mr. Chairman, I believe the substitute amendment is appropriate, and in support thereof I wish to make two points to the Committee. First, I have reasonable doubt that the Reorganization Act of 1949 should be extended on any basis. I believe there is considerable evidence that it is an erroneous delegation of the legislative power. I thought that an additional point was beautifully made by the ranking minority member handling this bill; namely that, once this power is extended interminably, the President will then have the veto power on further limitations that the Congress might send up. Third, I think we cannot agree to an outright appeal of the time limitation. I think it is a constitutional delegation of duty to us. Above all, much has been said here with eloquent pleas about the "twain," vis-a-vis the art of compromise by the gentleman from Wisconsin. "Twain" out in our part of the country—Missouri—means something else. It was a pseudonym for Samuel Clemens, the writer of "Huckleberry Finn," "Tom Sawyer," and other books. It really means 2 feet deep in measuring water in channels. However, we have to decide from whence we proceed when we make a compromise. We do not compromise with all of the walnuts in one boys basket, and then start dividing them. Mr. Chairman, what I am trying to say is compromise is not involved when we have already reversed the process of veto, between the legislative and the executive branches of the Government.

The second main point I wish to make in addressing this Committee of the Whole, is that according to Senate Joint Resolution 2, which was passed by this body, there is now a Special Committtee on the Organization of the Congress. It is composed of 12 Members of this body and 12 Members of the other body. This is a completely bipartisan committee. If the weight of the evidence heard to this date has any substance whatsoever, it is that this question of reorganization should be strongly reconsidered. In fact, the restoration of legislative prerogative is being strongly considered by the committee now. I submit that this is no time to make this permanent or bind a successive Congress, namely, the 90th Congress; while the organization of the Congress, including its relations with other bodies and branches of Government, are being seriously undertaken. Therefore, I would strongly urge the Members to support the substitute amendment.

The CHAIRMAN. The question is on the substitute amendment offered by the gentleman from Illinois [Mr. ERLENBORN].

The question was taken; and on a division (demanded by Mr. ERLENBORN) there were—ayes 40, noes 75.

So the substitute amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin [Mr. REUSS].

The amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. SISK, Chairman of the Committee of the Whole House on the State of the Union reported that that Committee, having had under consideration the bill (H.R. 4623) to eliminate the expiration date for the authority of the President to submit reorganization plans to the Congress, pursuant to House Resolution 326, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. This question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. ERLENBORN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ERLENBORN. I am, Mr. Speaker.

The SPEAKER. The gentleman qualifies.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ERLENBORN moves to recommit the bill, H.R. 4623 to the Committee on Government Operations.

The SPEAKER. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

Mr. HOLIFIELD. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1135) to further amend the Reorganization Act of 1949, as amended, so that such act will apply to reorganization plans transmitted to the Congress at any time before December 31, 1968, a similar bill to the one just passed by the House.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

S. 1135

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out "June 1, 1965" and inserting in lieu thereof "December 31, 1968".

The bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider and a similar House bill (H.R. 4623) were laid on the table.

GENERAL LEAVE TO EXTEND

Mr. HOLIFIELD. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF ADMINISTRATOR OF THE FEDERAL AVIATION AGENCY

Mr. MADDEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 407 and ask for its immediate consideration.

The Clerk read as follows:

H. RES. 407

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7777) to authorize the President to appoint General William F. McKee (United States Air Force, retired) to the office of Administrator of the Federal Aviation Agency. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. MADDEN. Mr. Speaker, I yield 30 minutes to the gentleman from California [Mr. SMITH], and, pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 407 provides an open rule with 2 hours of general debate for consideration of H.R. 7777, a bill to authorize the President to appoint Gen. William F. McKee, U.S. Air Force, retired, to the office of Administrator of the Federal Aviation Agency.

H.R. 7777 would authorize the President, acting by and with the advice of the Senate, to appoint General McKee to the office without affecting his status as a retired officer of the Air Force, subject to the provisions of the Dual Compensation Act.

The bill provides that General McKee, in the performance of his duties as Administrator of the FAA shall be subject to no supervision, control, restriction, or prohibition—military or otherwise—other than would be operative with respect to him if he were not a retired Regular Air Force officer.

The intent of Congress is expressed that the authority granted by enactment of this legislation is not to be construed as approval by the Congress of continuing appointments of military men to the office of Administrator of the FAA in the future.

Mr. Speaker, I urge the adoption of House Resolution 407.

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, as stated by the distinguished gentleman from Indiana [Mr. MADDEN], House Resolution 407, if adopted, would provide for an open rule of 2 hours of general debate for the consideration of H.R. 7777, having to do with the appointment of the Administrator of the Federal Aviation Agency.

It seems to me, Mr. Speaker, that the history of this agency is rather interesting and, if I may, I might review it for a moment or two.

Mr. Speaker, going back to the days of the late President Roosevelt there were suggested certain reorganizations having to do with aviation, and continued on subsequently, and when we had a fine airplane, the C–47 which turned out to be the workhorse throughout the world, we had various agencies controlling the airlines at that time, the military, civilian, and otherwise. There were a number of accidents by the military- and civilian-operated planes. As a result the Congress in its wisdom decided that it would set up a separate agency and take these operations away from the Department of Commerce. As a result the Federal Aviation Agency was created back in about 1958. As I understand it, Congress at that time had some concern as to whether or not this agency might be controlled by the military.

So it wrote into this particular act a restriction that a person from the military could not be the head of the particular Agency. At that time General Quesada was the individual who was to be selected as the head of the Agency, a very distinguished, a very qualified individual. He could not receive his retirement after some 35 years in the service, and at the same time receive a salary as Administrator of FAA. He was a man of some means, and gave up his retirement, or resigned from it, and became a very distinguished head of the FAA. As I understand it, after he resigned as head of the FAA we restored his retirement status to him.

Mr. Halaby came in, and he is going to resign. We have General McKee, whom I understand from both the minority and majority reports, is a very capable individual. He is an Air Force general with some 35 years of service, and he apparently is not in the position to waive his retirement pay.

The opposition takes the position on the basis this would set a precedent; possibly the law itself should be changed if we are going to make this exception, and permit an individual to receive his retirement at the same time he handles this particular job. Those are the arguments for and against.

Mr. Speaker, as far as I am personally concerned, there are many retired generals in various capacities with private corporations, receiving large salaries, who are back here lobbying for legislation. If General McKee has earned his retirement, I think he is entitled to re-

Public Law 89-43
89th Congress, S. 1135
June 18, 1965

An Act

79 STAT. 135.

To further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to the Congress at any time before December 31, 1968.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 5 of the Reorganization Act of 1949 (63 Stat. 205; 5 U.S.C. 133z–3), as last amended by the Act of July 2, 1964 (78 Stat. 240), is hereby further amended by striking out "June 1, 1965" and inserting in lieu thereof "December 31, 1968". Reorganization Act of 1949. Extension.

Approved June 18, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 184 accompanying H. R. 4623 (Comm. on Government Operations).
SENATE REPORT No. 154 (Comm. on Government Operations).
CONGRESSIONAL RECORD, Vol. 111 (1965):
Apr. 9: Considered and passed Senate.
June 3: Considered and passed House in lieu of H. R. 4623.

GPO 35-139